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Edward G. Renner

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# TOO MUCH (LEGISLATION) IS NEVER ENOUGH: UTILIZING A COURT'S EQUITY POWER TO ENJOIN LAWFUL FIREARM SALES

EDWARD G. RENNER\*

*Courts sitting in equity "will not gamble with human life, at whatever odds, on the ground that for loss of life there is no remedy that is, in an equitable sense, adequate."<sup>1</sup>*

## INTRODUCTION

On January 21, 1996, Smith & Wesson manufactured a nine-millimeter semi-automatic handgun stamped with a unique serial number.<sup>2</sup> A national distributor sold that handgun to Jim's House

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\* J.D. Candidate, June 2000.

1. Resident Advisory Bd. v. Rizzo, 503 F. Supp. 383, 389 (E.D. Pa. 1980).

2. This hypothetical situation is based on an actual scenario, with names changed to ensure confidentiality. The timeliness of the issue of gun control is evident based on recent media coverage. See, e.g., Fox Butterfield, *Lawsuits Lead Gun Maker To File Bankruptcy*, N.Y. TIMES, June 24, 1999 at A18 (noting that two gun manufacturers filed for bankruptcy protection in light of pending lawsuits); John R. Lott, Jr., *More Laws Won't Cure Gun Problems*, L.A. TIMES, June 17, 1999 at B9 (noting that over 20,000 federal, state and local gun control laws exist); Leslie Wayne, *'Smart' Guns Prove To Be No Quick Fix*, N.Y. TIMES, June 15, 1999 at A1 (addressing the feasibility of technological solutions to gun violence); Dennis Cauchon & Gary Fields, *Are Gun Laws Enforced?*, USA TODAY, June 10, 1999 at A1 (discussing current gun control laws and enforcement thereof); Peter Y. Hong, *L.A. to Sue Gun Makers in Bid to Curb Violence*, L.A. TIMES, May 25, 1999 at A1 (noting that the cities of San Francisco and Los Angeles joined Miami, Chicago, New Orleans and other cities in suing gun manufacturers); Frank Burni, *Senate Votes Gun Curbs, Hours After School Shooting*, N.Y. TIMES, May 21, 1999 at A1 (discussing historic Senate vote on new gun legislation); John Carpenter, *Feds Probe Gun Shops*, CHI. SUN-TIMES, Feb. 19, 1999 at 1 (documenting police investigation of gun shops targeted in City of Chicago lawsuit). Academia has also addressed both sides of the gun control issue. Compare JOHN R. LOTT, JR., *MORE GUNS, LESS CRIME 1* (1997) (asserting that having fewer gun control laws is statistically associated with lower levels of violent crime) with Jen Ludwig, *Concealed-Gun-Carrying Laws and Violent Crime: Evidence from State Panel Data*, 18 INT'L REV. L. & ECON. 239 (1998) (disagreeing with Lott's assertions and methodology). See also William Van Alstyne, *The Second Amendment and the Personal Right to Bear Arms*, 43 DUKE L.J. 1236 (1994). For further information on Smith & Wesson, refer to

of Handguns ("Jim's"), a retail shop in Schaumburg, Illinois. Trudy purchased the handgun from Jim's in September 1997. As a condition of lawful purchase, Trudy presented an Illinois firearm owner's identification card ("FOID").<sup>3</sup> She qualified for a FOID based in part on her lack of a criminal record.<sup>4</sup> Trudy also signed forms verifying her Chicago address.<sup>5</sup> Possession of a handgun within Chicago city limits had been outlawed since 1984.<sup>6</sup>

Upon returning to her Chicago apartment, Trudy gave the handgun to her son, John. John had financed the transaction. Because his criminal record barred him from qualifying for a FOID, he relied on his mother to buy the gun for him.<sup>7</sup> John had used his mother as a "straw purchaser"<sup>8</sup> to circumvent the legal

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its Internet homepage. *Smith and Wesson History* (visited June 10, 1999) <<http://www.smithwesson.com/history/index.html>>.

3. A "FOID" is a firearm owner's identification card issued under the authority of the State of Illinois. 430 ILL. COMP. STAT. 65/1.1-13.1 (West 1999). See BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS, DEPARTMENT OF THE TREASURY, FEDERAL FIREARMS REGULATIONS REFERENCE GUIDE 38 (Oct. 1995) [hereinafter ATF REFERENCE GUIDE] (defining an identification document and listing several government indicia qualifying as proper identification in lieu of a state-issued FOID). An "identificatory indicia" is defined as:

[a] document containing the name, residence address, date of birth, and photograph of the holder and which was made or issued by or under the authority of the United States Government, a State, political subdivision of a State, [or] a foreign government . . . which, when completed with information concerning a particular individual, is of a type intended or commonly accepted for the purpose of identification of individuals.

*Id.*

4. See generally 430 ILL. COMP. STAT. 65/2 (West 1999) (requiring an Illinois FOID to purchase firearms within Illinois).

5. See ATF REFERENCE GUIDE, *supra* note 3, at 38, 106 (explaining the requirement of signing an affidavit attesting to the truth and accuracy of the identification information provided, including a correct address).

6. See, e.g., CHICAGO, ILL., MUNICIPAL CODE ch. 4-144 (1997) (requiring license to buy, sell, or transfer any deadly weapons, and imposing strict reporting requirements on retail merchants); CHICAGO, ILL., MUNICIPAL CODE ch. 4-149 (1997) (mandating licensing of shooting galleries and gun clubs); CHICAGO, ILL., MUNICIPAL CODE ch. 8-20 (1997) (making it unlawful within the City of Chicago to possess or transport any firearm not disassembled into a non-operating condition); CHICAGO, ILL., MUNICIPAL CODE ch. 8-24 (1997) (outlawing the discharge or use of any dangerous weapon, including firearms, within Chicago). Selected portions of the Chicago, Illinois Municipal Code are available on the Internet at <<http://www.chicityclerk.com/legislation/codes/index.html>>.

7. See 18 U.S.C. § 922(d) (1994) (prohibiting the sale of handguns to felons, mental patients, and those convicted of crimes involving domestic violence).

8. See ATF REFERENCE GUIDE, *supra* note 3, at 97 (explaining that "straw purchasers" are those who "execute the Form . . . purporting to show that the straw purchaser is the actual purchaser of the firearm" when, in fact, the straw purchaser is doing so on behalf of the true buyer). In such an instance,

safeguards set in place by federal and local legislative bodies.<sup>9</sup>

Sometime between September 1997 and May 1998, Trudy's youngest son Bill took possession of the handgun. Like his brother John, Bill had a lengthy criminal record. In fact, he had recently been charged with a violent crime, placed in police custody, and released to Trudy's custody. Bill often served as a look-out at a neighborhood "crack house."<sup>10</sup>

In the early hours of July 19, 1998, undercover Officer Smith was staking out this same crack house. Bill was standing guard at the time, carrying the handgun that his mother had purchased in September 1997. Bill detected Officer Smith's surveillance and fatally shot him. On the one-year anniversary of Officer Smith's graduation from the Chicago Police Academy, an honor guard carried the officer's casket from a Pilsen neighborhood church.

Chicago police officers apprehended Bill and confiscated the handgun. The Bureau of Alcohol, Tobacco and Firearms ("ATF") traced the handgun first to Trudy, then to Jim's, then to Smith & Wesson.<sup>11</sup> Such success in mapping the chain of firearm

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the straw purchaser violates Federal law by falsely executing Form 4473, which is a sworn verification of identity, made under penalty of perjury. *Id.* Federal law defines "straw purchaser" as "any person in connection with the acquisition or attempted acquisition of any firearm . . . [who] knowingly . . . make[s] any false or fictitious oral or written statements . . . intended or likely to deceive [federally licensed firearms dealers]." Gun Control Act, 18 U.S.C. § 922(a)(6) (1996). *Black's Law Dictionary* defines a "front" as

a third party who is put up in name only to take part in a transaction . . . [or a] nominal party to a transaction; one who acts as an agent for another . . . [or a] person who purchases property for another to conceal identity of real purchaser, or to accomplish some purpose not otherwise allowed.

BLACK'S LAW DICTIONARY 1421 (6th ed. 1990). *See generally* Hoosier v. Lander, 17 Cal. Rptr. 2d 518, 520 n.2 (ordered not published by California Supreme Court, previously published at 14 Cal. App. 4th 234) (Cal. Ct. App. 1993) (discussing the phenomenon of straw purchasers while imposing criminal sanctions against such individuals).

9. *See* Gun Control Act, 18 U.S.C. § 44 (1996) (outlining major federal firearm control laws); *see also* Brady Handgun Violence Prevention Act of 1993, 18 U.S.C. § 922 (1994) (revising prior federal gun control act in response to increased levels of firearm violence) [hereinafter the "Brady Bill"]; National Firearms Act, 26 U.S.C. § 5811 (1999) (requiring the taxation of ownership transfers of firearms); Arms Export Control Act, 22 U.S.C. § 2778 (1994) (regulating importation and exportation of firearms); 27 C.F.R. §§ 47, 178, 179 (1994) (regulating firearm transfers and outlining methods of enforcement).

10. *See* KENNETH R. REDDEN & GERRY W. BEYER, MODERN DICTIONARY FOR THE LEGAL PROFESSION 221 (1993) (explaining that a "crack house" is a "place, such as an abandoned building, where people gather for the illegal use of drugs, particularly crack, a form of cocaine"). *See, e.g.,* United States v. Spikes, 158 F.3d 913, 918 (6th Cir. 1998) (discussing the role of crack houses in the drug trade).

11. *Department of the Treasury Bureau of Alcohol, Tobacco and Firearms General Statement of John W. Magaw, Director, Bureau of Alcohol, Tobacco and Firearms Before the Subcommittee On Treasury, General Gov't, and Civil*

possession is rare, because few murder weapons are ever recovered.<sup>12</sup> Those that are recovered are often impossible to trace. Not only does the straw purchase transfer blur the chain of possession, but the weapon's serial number is often obliterated.<sup>13</sup>

This Comment proposes that courts use the equitable remedy of injunctive relief to stop the flow of handguns into municipalities where they are outlawed. Part I of this Comment examines the history of firearm proliferation, including legislative activity relevant to firearm control, the current state of the illegal gun trade and legislative efforts to stem the tide of handguns flowing into urban communities. Part II analyzes the equitable remedy of injunctive relief as applied to the theory of public nuisance. Part III proposes that Illinois courts use their equitable powers to enjoin the otherwise lawful sale of handguns to residents of municipalities where possession of such firearms is outlawed.

### I. THE PROLIFERATION OF ILLEGAL HANDGUNS AND THE LEGISLATIVE RESPONSE

Firearms can slip through the cracks of the government registration system prior to criminal use.<sup>14</sup> The weapon, usually a handgun,<sup>15</sup> tends to be registered improperly, if at all, which complicates tracing efforts. Section A tracks the typical chain of

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*Service Senate Appropriations Committee*, 106th Cong. (1998), available in 1998 WL 8992502 (listing services provided by ATF for the Department of the Treasury, including the tracing of recovered or confiscated firearms for law enforcement agencies).

12. See Joseph P. Greco, *Pattern Crimes: Firearms Trafficking Enforcement Techniques*, 67 FBI L. ENFORCEMENT BULL., Sept. 1, 1998, available in 1998 WL 15028957 (discussing the tracing of firearms used in the commission of crimes).

13. See BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY, CRIME GUN TRACE ANALYSIS REPORTS: THE ILLEGAL YOUTH FIREARMS MARKETS IN 17 COMMUNITIES i (1997) [hereinafter ATF TRACE ANALYSIS REPORTS] (discussing removal of serial numbers from firearms used in crimes). The following is an excerpt from the opening letter: "[p]reliminary research shows that a high percentage of crime guns with obliterated serial numbers were originally purchased as part of a multiple sale by a federally licensed gun dealer and then illegally trafficked." *Id.*

14. See Brendan J. Healey, *Plugging the Bullet Holes in U.S. Gun Law: An Ammunition-Based Proposal for Tightening Gun Control*, 32 J. MARSHALL L. REV. 1, 11-12 (1998) (noting that the burden of licensure falls upon the states).

15. See ATF REFERENCE GUIDE, *supra* note 3, at 5, 6 (defining a "firearm" as "any weapon . . . which will or is designed to or may readily be converted to expel a projectile by the action of an explosive"). A "long gun" is a colloquialism for a rifle or shotgun. *Id.* A "handgun," however, is a firearm "which has a short stock and is designed to be held and fired by the use of a single hand." *Id.* at 6. Although important, the distinction between long and hand guns within the realm of gun control legislation is beyond the scope of this Comment. Where "handgun" is used herein, it refers only to the above definition.

possession of an illegally used and then confiscated handgun. Section B reviews legislative activity regarding handgun registration. Section C discusses the effectiveness of legislative acts discussed in Section B. Section D examines ATF enforcement of such legislation, other federal enforcement procedures and sales control.

### A. *How a Handgun Falls into the Wrong Hands*

This Section explores the process by which lawfully purchased handguns fall into the hands of criminals. Typically, a firearm manufacturer sells firearms to a wholesale distributor, who in turn resells them to a federally licensed firearms retailer.<sup>16</sup> The retailer sells the firearm to a straw purchaser, who in turn illegally resells or transfers the weapon to an unlicensed person.<sup>17</sup>

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16. ATF REFERENCE GUIDE, *supra* note 3, at 5.

17. Gun Control Act of 1968, 18 U.S.C. § 44 (1968) (renamed the Brady Handgun Violence Prevention Act of 1993, *codified as amended* at 18 U.S.C. § 922(a)(6) (1994)).

It shall be unlawful . . . for any person in connection with the acquisition or attempted acquisition of any firearm or ammunition from a . . . licensed dealer . . . knowingly to make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive such importer, manufacturer, dealer, or collector with respect to any fact material to the lawfulness of the sale or other disposition of such firearm or ammunition under the provisions of this chapter.

*Id.* Section 922 makes it unlawful for anyone except a licensed dealer to “engage in the business of importing, manufacturing, or dealing in firearms, or in the course of such business to ship, transport, or receive any firearm or ammunition in interstate or foreign commerce.” 18 U.S.C. § 922(a)(1)(A), (B). Similarly, it is unlawful for non-dealers to sell firearms in interstate or foreign commerce or to ship or receive firearms across state lines. 18 U.S.C. § 922(a)(3). The critical language aimed at straw purchases makes it illegal, during an attempt to acquire or purchase either firearm or ammunition, “knowingly to make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive such importer, manufacturer, dealer, or collector with respect to any fact material to the lawfulness of the sale or other disposition of” such ammunition or firearm. 18 U.S.C. § 922(a)(6). Licensed dealers are also limited to selling handguns and related ammunition to those 21 or older, while long guns and ammunition may be sold to purchasers over 18. 18 U.S.C. § 922(b) (1994). Of special relevance to this Comment is the limitation on sales where the “purchase or possession by such person of such firearm would be in violation of any State law or any published ordinance applicable at the place of sale, delivery or other disposition, unless the licensee knows or has reasonable cause to believe” the purchase would not, in fact, violate the laws in question. *Id.* The statute also codifies language mandating that the purchaser arrive at the place of purchase in person and attest to a version of the following sworn statement.

Subject to penalties provided by law, I swear that, in the case of any firearm other than a shotgun or a rifle, I am twenty-one years or more of age, or that, in the case of a shotgun or rifle, I am eighteen years or

The illegal recipient "cleans" the firearm by obliterating or grinding off the serial number in order to prevent authorities from tracing the weapon by means of that number. Finally, the straw purchaser reports the "cleaned" guns as lost or stolen.<sup>18</sup> This process breaks the chain of records, making further tracing extremely difficult. The gun is now free from federal restriction and may enter the criminal market.<sup>19</sup>

### B. Legislative Approaches To Firearms Sales Control

Both federal and local legislative bodies have addressed issues regarding the criminal use of weapons.<sup>20</sup> Federal law sets threshold restrictions on the sale of firearms and allows local government to tighten those restrictions as necessary.<sup>21</sup> This Section first explores a local legislative approach to firearm control, then examines the federal approach.

#### 1. Local Approach

Local and federal laws bind firearm dealers in conducting

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more of age; that I am not prohibited by the provisions of chapter 44 of title 18, United States Code, from receiving a firearm in interstate or foreign commerce; and that my receipt of this firearm will not be in violation of any statute of the State and published ordinance applicable to the locality in which I reside. Further, the true title, name, and address of the principal law enforcement officer of the locality to which the firearm will be delivered are\_\_\_\_\_

Signature\_\_\_\_\_ Date\_\_\_\_\_

and containing blank spaces for attachment of a true copy of any permit or other information required pursuant to such statute or published ordinance.

18 U.S.C. § 922(c).

18. See generally ATF TRACE ANALYSIS REPORT, *supra* note 13 (discussing the means whereby firearms slip beyond federal and local, if required, registration control).

19. See generally *id.* (discussing serial number removal). Obliterating the serial number of the firearm destroys the numeric link to the government-required records. Without a serial number, or a ballistics match to a report with the number prior to its obliteration, tracing the weapon beyond the manufacturer is effectively impossible. *Department of the Treasury Bureau of Alcohol, Tobacco and Firearms General Statement of John W. Magaw Director, Bureau of Alcohol, Tobacco and Firearms Before the Subcomm. on Treasury, General Gov't and Civil Service Appropriations Comm.*, 106th Cong. (1998), available in 1998 WL 8992502 (discussing the ATF National Tracing Center and its importance to solving firearms-related crimes).

20. See 720 ILL. COMP. STAT. 5/24-1 (West 1996) (enacting state law concurrent with federal legislation).

21. H. Todd Iveson, *Manufacturers' Liability to Victims of Handgun Crime: A Common-Law Approach*, 51 FORDHAM L. REV. 771, 775 (1983); Thomas E. Castleton, Note, *A Matter of Expectations: Interpreting the Statutory Preemption of Local Assistance to Federal Firearms Regulators*, 15 ALASKA L. REV. 345, 351 (1998) (discussing an Alaska preemption statute limiting municipal power to regulate firearms).

sales.<sup>22</sup> The City of Chicago has instituted one of the most comprehensive gun control laws in the United States.<sup>23</sup> The 1970 Illinois Constitution<sup>24</sup> contains a "home rule"<sup>25</sup> provision, enabling municipalities with populations exceeding 25,000 to enact any local municipal legislation not expressly denied to them by the Illinois legislature.<sup>26</sup> Chicago has exercised its home rule authority by enacting highly technical safety equipment standards for handguns located within city limits not registered before 1984.<sup>27</sup> Because handguns currently in mass production do not yet meet the stringent safety standards imposed by the Chicago City Council,<sup>28</sup> the practical effect of these standards has been to ban

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22. 18 U.S.C. § 922(d) (1996).

23. See Richard M. Daley, *The City's War on Handguns*, CHICAGO SUN-TIMES, Dec. 7, 1998, at 27 (responding to previous article and critical editorial). "Chicago has a complete ban on handguns, except for those purchased and registered before 1982." *Id.* See also Bob Van Voris, *Gun Cases Use Tobacco Know-How*, NAT'L L.J., Dec. 7, 1998, at A1, A15 (noting strict gun control laws in Chicago). In Chicago, "it [is] virtually impossible to possess a handgun legally." *Id.*

24. See ILL. CONST. art. VII, § 6 (1970) (describing a home rule city as one that "may exercise any power . . . including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare.")

25. See REDDEN & BEYER, *supra* note 10, at 415 (defining "home rule" as a "[t]heory of government allowing local or regional governments to run their own affairs . . . [and] allow[ing] the local government to resolve its own problems as long as state laws and constitutions are not violated.")

26. ILL. CONST. art. VII, § 6.

27. CHICAGO, ILL., MUNICIPAL CODE § 4-144-062 (1997). The "[s]ale of [h]andguns [w]ithout [c]hildproof [o]r [s]afety [d]evices [is] [p]rohibited." *Id.* "Except as allowed by subsection (e) of Section 8-20-170 [Peace Officer exemption] of this code, it shall be unlawful for any person to sell, barter or give away to any person any handgun which does not" have specific safety equipment. *Id.* First, "safety mechanism[s] to hinder the use of the handgun by unauthorized users" are required, such as "trigger locks, combination handle locks, and solenoid use-limitation devices." *Id.* Also, a "load indicator device that provides reasonable warning to potential users such that users even unfamiliar with the weapon would be forewarned and would understand the nature of the warning." *Id.* This Code further defines safety mechanism as "a design adaptation or nondetachable accessory that lessens [sic] the likelihood of unanticipated use of the handgun by other than the owner of the handgun and those specifically authorized by the owner to use the handgun." *Id.* Several different kinds of devices preclude immediate firing of a handgun. A "trigger lock prevents a potential user from pulling the trigger of the handgun without first removing the . . . lock" with a key. *Id.* A "combination handle lock" prevents firing the handgun unless the combination is correctly entered to unlock the trigger or handle mechanism. *Id.* "A solenoid use-limitation device" precludes the firing of the handgun "unless a magnet of the appropriate strength is placed in proximity to the handle of the weapon." *Id.* Finally, a "load indicator" indicates that the weapon is loaded and that pulling the trigger or other careless handling may cause the weapon to discharge. *Id.*

28. See *infra* text accompanying note 34 (stating that federal law is applicable to local published ordinances).



handguns within Chicago.<sup>29</sup> Possession of an unregistered handgun in Chicago carries heavy municipal penalties<sup>30</sup> in addition to possible state and federal prosecution. The City of Chicago enacted these laws in response to poor enforcement of state and federal statutes.<sup>31</sup>

## 2. Federal Approach

Congress has attempted to strictly limit handgun sales because of the "leakage" of legally purchased handguns into the hands of criminals. The majority of the legislation is codified in the Gun Control Act of 1968, the Brady Handgun Violence Prevention Act of 1993, and the Gun Importation Act.<sup>32</sup> Under these acts, purchasers who pass a "Brady Check"<sup>33</sup> and possess a valid FOID card may buy firearms.<sup>34</sup> However, this federal legislation<sup>35</sup> does not exclusively dictate standards for legal firearm

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29. See CHICAGO, ILL., MUNICIPAL CODE § 4-144-062 (1997) (requiring particular safety devices before a handgun may be legally registered); CHICAGO, ILL., MUNICIPAL CODE § 8-20 (1997) (outlining the primary body of Chicago's gun control law); Daley, *supra* note 23, at 27 (discussing Chicago's efforts to control firearms within the city).

30. See CHICAGO, ILL., MUNICIPAL CODE §§ 8-20-015, 8-20-020 (1997) (listing municipal penalties for firearm violations). The Chicago Municipal Code provides for fines and up to six months imprisonment for firearms violations. *Id.* Each infraction is a separate offense, so penalties may run to thousands of dollars and lengthy incarceration. *Id.* Further, the City of Chicago may impound automobiles in which illegal firearms are found. *Id.* Prior to any hearing regarding the legality of the seizure, the owner must pay a \$500.00 fine plus \$125.00 towing costs to retrieve the automobile. *Id.* Additionally, all criminal laws of Illinois apply. 720 ILL. COMP. STAT. 5/24-1 (West 1996).

31. 720 ILL. COMP. STAT. 5/24-1 (West 1996).

32. The Brady Bill, 18 U.S.C. §§ 921-25A (1994); National Firearms Act, 26 U.S.C. § 5801-72 (1994); Arms Export Control Act, 22 U.S.C. § 2778 (1994).

33. See Brady Bill, 18 U.S.C. § 922 (1994) (adjusting standard process of purchaser approval with a national instant check system effective Nov. 30, 1998). *But see* David S. Cloud, *National Gun-Check System Draws Fire From Both Sides*, WALL ST. J., Nov. 12, 1998, at A32 (noting complaints regarding the Federal Bureau of Investigation's national computer system intended to be used for instant background checks on potential firearm purchasers).

34. See Gun Control Act of 1968, 18 U.S.C. § 922(a)(1)(A) (1994) (stating that "[it] shall be unlawful . . . for any person . . . except a licensed importer, licensed manufacturer, or licensed dealer, to engage in the business of importing, manufacturing, or dealing in firearms."); *see also* CHICAGO, ILL., MUNICIPAL CODE ch. 4-144-010 (1997) (outlining municipal standards for the sale and purchase of deadly weapons within Chicago).

It shall be unlawful for any person to engage in the business of selling, or to sell . . . [any] firearm . . . or other deadly weapon which can be carried or concealed on the person, without securing a license . . . [and t]he license required by this chapter shall be in addition to any other license required by law.

*Id.*

35. 18 U.S.C. § 922 (1996).

purchases.<sup>36</sup> Instead, it functions in concert with local legislation, allowing more restrictive gun control in areas where local legislatures deem it necessary or desirable.<sup>37</sup> The federal rules create a threshold national policy while maintaining a quasi-decentralized approach to gun purchase restrictions.

The Gun Control Act of 1968 prohibits federal firearms licensees from selling firearms to any purchaser who resides in an area where the weapon sought to be purchased is illegal.<sup>38</sup> In addition, the weapons dealer is expected to exercise sound judgment and refuse to sell to suspected straw purchasers.<sup>39</sup> Dealers are prohibited from selling to any person who makes or attempts to make false statements to procure a firearm surreptitiously.<sup>40</sup> Federal legislation and policy impose these determinations on the dealer, while enforcement is only effective against the buyer after commission of the crime.<sup>41</sup>

November 30, 1998, marked the initiation of the final phase of the Brady Handgun Violence Prevention Act of 1993: a nationwide system of background checks of potential purchasers.<sup>42</sup> Such a

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36. *Id.* See also Gun Control Act of 1968, 18 U.S.C. § 927 (1994) (outlining statutory language limiting legislative occupation of the field).

37. See Gun Control Act of 1968, 18 U.S.C. § 927 (1994) (explaining that “[n]o provision of this chapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which such provision operates to the exclusion of the law of any State on the same subject matter, unless there is a direct and positive conflict. . . .”) *Id.* See ATF REFERENCE GUIDE, *supra* note 3, at 22 (noting effect of the Brady Bill on state law); see also 26 U.S.C. § 5847 (1994) (observing the effect of the statute on state law). “Nothing in this chapter shall be construed as modifying or affecting the requirements of section 414 of the Mutual Security Act of 1954, as amended, with respect to the manufacture, exportation, and importation of arms, ammunition, and implements of war.” *Id.*

38. Gun Control Act of 1968, 18 U.S.C. § 922(b)(2) (1994). The act makes it unlawful for a licensed dealer or manufacturers to “sell or deliver . . . any firearm to any person in any State where the purchase or possession by such person of such firearm would be in violation of any State law or any published ordinance applicable at the place of sale, delivery or other disposition.” *Id.* However, an exception exists where the seller has reason to believe the purchaser would not be in violation of the law after the sale. *Id.* See also 18 U.S.C. § 921(a)(19) (1994) (defining the term “published ordinance” as a “law of any political subdivision of a State which the Secretary determines to be relevant to the enforcement of this chapter and which is contained on a list compiled by the Secretary, which list shall be published in the Federal Register, revised annually, and furnished to each licensee”). *Id.*

39. Gun Control Act of 1968, 18 U.S.C. § 922(a)(6) (1994). See *supra* note 8 for a definition of straw purchasers and a comparison of various judicial definitions.

40. 18 U.S.C. § 922(a)(6) (1994). See *supra* notes 38-40 and accompanying text for a discussion of a dealer’s statutory obligations at the time of sale.

41. See 18 U.S.C. (b)-(e), (g), (m) (1994) (discussing dealer’s responsibility at sale). Statutory punishment slants heavily against the buyer. 18 U.S.C. § 922(a)(6) (1994).

42. 18 U.S.C. § 922 (1994).

check determines instantly whether the dealer may legally sell to the purchaser, leaving only local restrictions with which the dealer must comply.<sup>43</sup>

### C. The Relative Effectiveness of Gun Control Laws

Currently, there exists almost one gun for every man, woman and child in the United States,<sup>44</sup> yet four million additional firearms flow into the market place each year.<sup>45</sup> Statistics vary on how effectively gun control laws are enforced.<sup>46</sup> Handguns, regardless of the efforts of law enforcement, continue to pour into urban environments.<sup>47</sup> The per capita rate of homicides committed with handguns fluctuates within a limited range, but actual statistics remain on an upward climb.<sup>48</sup> Chicago was deemed the U.S. murder capital in 1998 with 698 homicides.<sup>49</sup>

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43. *Id.* See also Cloud, *supra* note 33, at A32 (noting national concerns regarding the impending instant check system).

44. The total number of handguns circulating in the U.S. market today is arguably in excess of 200,000,000, a ratio of 0.8 firearm for each of the estimated 249,000,000 U.S. citizens. E. Judson Jennings, *Saturday Night, Ten P.M.: Do You Know Where Your Handgun Is?*, 21 SETON HALL LEGIS. J. 31, 35 n.14 (1997) (noting difficulty of ascertaining exact count, but estimating as many as 200,000,000 firearms); *Iraq's Risky Game*, BUSINESS MIDDLE EAST, Feb. 1, 1999, available in 1999 WL 2033551 (estimating current U.S. population at 249,000,000). See generally *Nation Watch: Under the Gun*, ORANGE COUNTY REGISTER (Cal.), Jan. 9, 1998, at A3, available in 1998 WL 2606814 (noting graphically the total number of guns circulating in the U.S. market). *Iraq's Risky Game*, BUSINESS MIDDLE EAST, Feb. 1, 1999, available in 1999 WL 2033551 (estimating current U.S. population at 249,000,000).

45. See *Facts on the Use and Prevalence of Guns: Gun Seizures in Chicago*, THE COMPILER, Fall 1998, at 18 [hereinafter *Facts on the Use*] (published by the Illinois Criminal Justice Information Authority in Chicago, Ill.) (reporting that in 1997, more than 2.5 million background checks were conducted). Because only a single check is required for the purchase of multiple handguns on a given occasion, this number also represents the minimum number of attempted firearm purchases. *Id.*

46. See *infra* note 48 (discussing percentage of firearms and handguns used in homicides in Chicago).

47. See *Facts on the Use*, *supra* note 45, at 16 (reporting that in 1997, 12,257 firearms were seized within Chicago's city limits, compared with 21,243 firearms seized in 1994.) *Id.* See also Daley, *supra* note 23, at 27 (noting that Chicago police have confiscated over 170,000 firearms during the past ten years).

48. See *Facts on the Use*, *supra* note 45, at 15, 17 (stating that in 1996, 67.8% of all homicides in the United States were committed using firearms, and that in 1997, 75% of Chicago homicides involved firearms). Revolvers and semiautomatic pistols comprised 85% of the firearms used in homicides in Chicago during 1997. *Id.* at 15.

49. See *Chicago Is U.S. Murder Capital, Early Data Shows City's Homicide Rate Tops New York City's, Which Has Been Dropping*, PEORIA J. STAR, Jan. 2, 1999, at B1 (noting Chicago had 698 homicides, almost 70 more than New York City's 629); *Chicago Is Murder Capital of U.S. in '98*, THE ARIZONA REPUBLIC, Jan. 2, 1999, at A3 (noting that Chicago's per capita homicide rate

Criminal sanctions imposed by legislatures often fail to discourage dealers. First, the dealer profits from every sale, whether legal or illegal.<sup>50</sup> Second, because an illegal possessor will usually wish to replace a confiscated firearm, each seized weapon represents additional potential profits for the dealer. As a result, dealers will continue to find a steady stream of willing purchasers.

#### *D. Tracing Stolen Weapons: An ATF Analysis*

The ATF<sup>51</sup> is the agency responsible for monitoring compliance with federal laws regarding the sale and possession of all types of firearms.<sup>52</sup> The ATF's responsibilities include registering each firearm sale<sup>53</sup> and regulating<sup>54</sup> federally licensed firearm dealers.<sup>55</sup> The ATF also traces confiscated weapons at the request of a confiscating enforcement agency (usually a local police department).<sup>56</sup> Finally, the ATF issues numerous publications<sup>57</sup> designed to apprise local dealers of relevant laws governing the sale of weapons to individuals.<sup>58</sup> The ATF distributes these publications to federal licensees in an effort to educate them about the relevant local laws.<sup>59</sup>

In 1995, the ATF conducted a study of weapons confiscated in seventeen U.S. cities during that year.<sup>60</sup> The study catalogued and traced firearms confiscated by local law enforcement authorities.<sup>61</sup> The results illustrated that a high percentage of confiscated firearms used in crimes either had serial numbers removed, or were originally part of a multiple sale or both.<sup>62</sup> Additionally,

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is almost double that of New York City).

50. In Illinois, the offense of unlawful use of weapons does not hold retail sellers accountable for crimes committed by others with weapons purchased from retailers. 720 ILL. COMP. STAT. 5/24-1 (West 1996). Accordingly, gun dealers face few deterrents against making questionable sales. *Id.*

51. The Department of the Treasury, Bureau of Alcohol, Tobacco, and Firearms. See *supra* note 11 (noting ATF's position within the Department of the Treasury).

52. See *supra* note 11 (discussing promulgated regulations for ATF).

53. *Id.*

54. *Id.*

55. *Id.*

56. ATF TRACE ANALYSIS REPORT, *supra* note 13, at i. "During the course of the initiative, trace requests from the 17 sites nearly doubled over the same period the previous year, from 20,000 to more than 37,000 requests." *Id.*

57. See ATF REFERENCE GUIDE, *supra* note 3, at 91 (noting catalogue of publications offered by ATF). The ATF also publishes the ATF QUARTERLY BULLETIN. *Id.* The ATF supplies federally licensed dealers with a manual outlining all local and state laws regarding the sale of firearms. *Id.*

58. *Id.*

59. *Id.*

60. ATF TRACE ANALYSIS REPORT, *supra* note 13, at 1-9.

61. *Id.*

62. See *id.* at i (discussing removal of serial numbers from firearms). These findings were summarized as follows, in a letter prefacing the ATF TRACE

researchers traced the weapons to in-state dealers.<sup>63</sup> The weapons had traveled rapidly from sale to criminal use. Proper sampling techniques<sup>64</sup> allow generalization of the results of the study to major U.S. cities.<sup>65</sup>

## II. AN ANALYSIS OF INJUNCTIVE RELIEF

Equitable abatement by means of injunction enables cities to stop the illegal spread of weapons before they ever leave a gun shop. A court of equity may enjoin a sale as a public nuisance. Section A of this part introduces the theories of nuisance abatement and injunctive relief. Section B outlines public

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ANALYSIS REPORT from Raymond W. Kelly, Undersecretary (Enforcement), to Secretary Rubin, Secretary of the Treasury.

The following are among the reports' findings about firearms recovered by enforcement agencies:

- Firearms rapidly diverted from first retail sales at federally licensed gun dealers to an illegal market account for at least a quarter of the firearms that police recover from juveniles and youth.
- One out of ten firearms recovered by police is from a juvenile (17 and under). When youth (ages 18-24) are included, the number changes to four out of 10.
- In 15 of the 17 sites, the majority or the single largest supply of the crime guns successfully traced comes from retail sources *within* the State. Jersey City and Washington, DC, are the only sites where the largest single source of successfully traced crime guns is outside of their State or borders.
- Seven out of ten crime guns recovered from adults are handguns. For juveniles and youth, the number is eight out of 10.
- Half of all crime guns recovered by police are semiautomatic pistols, which are also the preferred weapons for juvenile and youthful offenders (60 percent).
- While thousands of different kinds of firearms are available, crime guns are concentrated among a relatively small number of makes and calibers in each city.
- Preliminary research shows that a high percentage of crime guns with obliterated serial numbers were originally purchased as part of a multiple sale by a federally licensed gun dealer and then illegally trafficked.

*Id.*

63. *Id.*

64. See Andrew F. Seigel, PRACTICAL BUSINESS STATISTICS 256 (2d ed. 1994) (explaining that a random sample is chosen where each member of the sample population has an equal chance of being chosen and each choice is independent from every other choice).

65. See ATF TRACE ANALYSIS REPORT, *supra* note 13, at i (discussing the relationship between serial number removal and the use of firearms in crimes). The cities participating in the study between July 1996 and April 1997 were: Atlanta, Georgia; Baltimore, Maryland; Birmingham, Alabama; Boston, Massachusetts; Bridgeport, Connecticut; Cleveland, Ohio; Inglewood, California; Jersey City, New Jersey; Memphis, Tennessee; Milwaukee, Wisconsin; New York, New York; Richmond, Virginia; St. Louis, Missouri; Salinas, California; San Antonio, Texas; Seattle, Washington; and Washington, D.C. *Id.* at ii, 3.

nuisance abatement within Illinois. Sections C covers injunctions, while Section D discusses the minimization of potential errors. Section E analyzes injunctions against lawful but harmful activity.

*A. Equity Analysis and Nuisance Abatement through Injunction*

With large numbers of illegal weapons in circulation,<sup>66</sup> a municipality may find that such traffic poses a risk to the public health or welfare, thereby creating a nuisance. When a nuisance affects the public welfare, a municipality may seek abatement in a court of equity.<sup>67</sup> In Illinois, the common law and statutes work together. The Illinois Public Nuisance Act<sup>68</sup> does not govern fully the field of nuisance abatement,<sup>69</sup> allowing actions for abatement under the common law.<sup>70</sup> The statute delineates specific nuisances while leaving room for judicial determinations of unusual or unforeseeable activity impacting others or the public at large.<sup>71</sup> Those activities that threaten human life are judicially cognizable

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66. See *supra* note 44 (discussing estimates of total firearms in the United States market).

67. See *City of Chicago v. Cecola*, 389 N.E.2d 526, 528 (Ill. 1979) (holding that any nuisance, either statutory or common law, affecting public welfare "may be abated in equity on the application of the proper officer"); see also *Stead v. Fortner*, 99 N.E. 680, 682 (Ill. 1912) (holding that abatement of nuisance is a power of Illinois municipalities); *City of Sterling v. Speroni*, 84 N.E.2d 667, 670 (Ill. App. Ct. 1949) (noting defendant's repeated criminal fines, reaffirming his intent to continue running "bookie joint"); see generally *Iveson*, *supra* note 21, at 773 (discussing appropriateness of court's action in supplementing statutory duties with those derived from the common law).

68. The Illinois Public Nuisance Act, 720 ILL. COMP. STAT. 5/47-5 (West 1996). The Act declares that it is a "public nuisance" to "erect, continue, or use a building or other place for the exercise of a trade . . . [which] is offensive or dangerous to the health of individuals or of the public." *Id.* This section of the Act concludes: "Nothing in this Section shall be construed to prevent the corporate authorities of a city, village, or incorporated town, or the county board of a county, from declaring what are nuisances and abating them within their limits. Counties have that authority only outside the corporate limits of a city. . . ." *Id.*

69. See *Cecola*, 389 N.E.2d at 528 (explaining the coexistence of nuisance statute and common law). It has been firmly incorporated into Illinois law "that the [Illinois Public Nuisance Act] was not intended to displace common law actions to abate public nuisances." *Id.* See also *City of Chicago v. Festival Theater Corp.*, 438 N.E.2d 159, 162 (Ill. 1982) (considering nuisance abatement and injunction application).

70. See *People ex rel. Burris v. C.J.R. Processing, Inc.*, 647 N.E.2d 1035, 1039 (Ill. App. Ct. 1995) (defining common law nuisance as an "act or failure to act which injures the safety health or morals of public; or which causes substantial public annoyance, inconvenience or injury"); see also *Gilmore v. Stanmar*, 633 N.E.2d 985, 992-93 (Ill. App. Ct. 1994) (discussing relationship between nuisance statute and the common law).

71. The lengthy list of statutory nuisances appears at 720 ILL. COMP. STAT. 5/47-5 (West 1996). See *Gilmore*, 633 N.E.2d at 660 (reviewing the development of the common law of nuisance).

prior to any resulting physical injury or death.<sup>72</sup>

The injunctive remedy may often be more expansive than that which is available at law.<sup>73</sup> Accordingly, injunctions are treated as exceptional remedies and are generally granted only in exigent circumstances.<sup>74</sup> As is frequently noted, "[e]quity seeks to remedy that which cannot be adequately remedied at law."<sup>75</sup> An injunction functions both retroactively to correct the wrong and prospectively to prevent future harmful behavior.<sup>76</sup> In comparison, remedies at law function retroactively only, with potential deterrence being the only future effect.<sup>77</sup> Courts of equity can grant preventative relief for future or contemplated acts when such acts would constitute a public nuisance.<sup>78</sup>

Abatement of a public nuisance usually takes the form of an injunction.<sup>79</sup> A court of equity permanently enjoins a defendant's

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72. See *Seide v. Prevost*, 536 F. Supp. 1121, 1133 (S.D.N.Y. 1982) (enjoining activity which threatened human life, prior to actual injury); see also *Kolstad v. Rankin*, 534 N.E.2d 1373, 1380 (Ill. App. Ct. 1989) (enjoining use of firing range because of possible injury); *Joos v. Illinois Nat'l Guard*, 100 N.E. 505, 508-09 (Ill. 1912) (enjoining use of government leased firing range in favor of farm worker's safety).

73. See *Stead v. Fortner*, 99 N.E. 680, 682 (Ill. 1912) (stating that an injunction is "a more complete and perfect remedy . . . than is attainable by law"); see also *Cecola*, 389 N.E.2d at 528 (explaining the completeness of injunctive relief relative the standard remedy of damages available at law).

74. See *City of Chicago v. Stern*, 421 N.E.2d 260, 261 (Ill. App. Ct. 1981) (urging that an injunction is an exceptional remedy, only granted with great caution).

75. *City of Chicago v. Festival Theater Corp.*, 438 N.E.2d 159, 167 (Ill. 1982) (citing *La Salle Nat'l Bank v. County of Cook*, 312 N.E.2d 252, 254 (Ill. 1974) for the rule of equity that an injunction will not issue except where there is no adequate remedy at law). See *Betts v. Illinois Dep't of Revenue*, 396 N.E.2d 1150, 1154 (Ill. App. Ct. 1979) (listing prerequisites for equitable remedies).

76. See *Stead*, 99 N.E. at 682 (holding that courts of equity are able to give a more complete remedy operating into the future, unlike the redress attainable at law).

77. See RONALD N. BOYCE & ROLLIN M. PERKINS, *CASES AND MATERIALS ON CRIMINAL LAW AND PROCEDURE* 1-9, 324 (7th ed. 1989) (explaining that criminal sanctions apply only to past activity, in that the elements of the crime are not satisfied until the act has been completed or, in the case of inchoate (attempt) crimes, until the perpetrator has at least commenced the criminal act).

78. See *Stead*, 99 N.E. at 682 (quoting *Barrett v. Mount Greenwood Cemetery Ass'n*, 42 N.E. 891 (Ill. 1896)) (declaring that "it is a well recognized branch of equity jurisprudence to restrain, by injunction, public nuisances.") See also *Festival Theater Corp.*, 438 N.E.2d at 167 (quoting *People ex rel. Kerner v. Huls*, 189 N.E. 346, 348 (Ill. 1934): "[t]he purpose of giving equity jurisdiction in public nuisance actions is to offer remedies more complete than those available at law.")

79. See *supra* notes 76-78 (explaining that public nuisance abatement generally occurs via injunction).

nuisance-related activities<sup>80</sup> where criminal prosecution proves inapplicable.<sup>81</sup> Further, if officials disregard their duties, or altogether refuse to perform them, the court may apply "the strong and efficient" hand of equity to address the nuisance.<sup>82</sup>

In *Stead v. Fortner*, the Illinois Supreme Court wrote that the "maint[aining] . . . the public health, morals, safety and welfare is on a plane above mere pecuniary damage."<sup>83</sup> The fact that particular conduct is subject to criminal sanctions does not necessarily foreclose the possibility of common law nuisance abatement against the proscribed conduct.<sup>84</sup> When the governing body recognizes a nuisance, the tool for dealing with such a problem is an injunction against that nuisance activity.<sup>85</sup>

### B. How to Abate a Public Nuisance

This Section focuses on the procedures applicable to enjoining the sale of firearms. Injunctions generally apply to any harmful activity recognized as a nuisance by a court sitting in equity or by an applicable statutory provision. In Illinois, the elements that must be satisfied prior to the issuance of an injunction are: (1) the threat of an irreparable injury without injunctive relief; (2) the identification of some protectable interest; (3) the lack of an adequate remedy at law; (4) the weighing of the balance of hardships in favor of the plaintiff; and (5) the probability of success on the merits of the underlying suit.<sup>86</sup> When state and federal officials fail to enforce statutes adequately,<sup>87</sup> cities are able to protect the public through other means, including injunctive relief. Through injunctive relief, cities may block the sale of firearms to those who reside in areas where ownership of such weapons is illegal.<sup>88</sup>

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80. *Id.*

81. See *City of Chicago v. Cecola*, 389 N.E.2d 526, 528 (Ill. 1979) (holding that abatement usually takes the form of an injunction, whereby a court of equity permanently enjoins the defendant's activities when ordinary deterrent methods, such as criminal prosecutions, have proven ineffective).

82. *Stead*, 99 N.E. at 684.

83. *Id.* at 684.

84. *City of Chicago v. Festival Theater Corp.*, 438 N.E.2d 159, 164 (Ill. 1982).

85. See *supra* notes 78 and 81 and accompanying text for an outline of primary tools for dealing with nuisances.

86. *Danville Polyclinic, Ltd. v. Dethmers*, 631 N.E. 2d 842, 844 (Ill. App. Ct. 1994). See also *Baja Contractors, Inc. v. City of Chicago*, 830 F.2d 667, 675 (7th Cir. 1987) (listing five elements which must be satisfied before a judge may issue a preliminary injunction).

87. See Daley, *supra* note 23, at 27 (discussing number of guns seized in Chicago in 1997). The 170,000 firearms confiscated during the past 10 years support the assertion that while the laws are being enforced, the supply nonetheless fails to decrease significantly. *Id.*

88. 18 U.S.C. § 922(b)(2) (1994) (stating that it is illegal for a dealer to sell



The Illinois Public Nuisance Act sets forth those activities which the legislature has determined to be public nuisances.<sup>89</sup> The list includes "erect[ing], continu[ing], or us[ing] a building or other place for the exercise of a trade . . . or otherwise, [that] is offensive or dangerous to the health of individuals or of the public."<sup>90</sup> Any building, structure, or non-developed real estate qualifies within the definition of building.<sup>91</sup> The Act concludes with the statement that "[n]othing in this Section shall be construed to prevent the corporate authorities of a city . . . from declaring what are nuisances and abating them within their limits."<sup>92</sup> Therefore, cities may efficiently address local nuisances, as Chicago has.<sup>93</sup> Nuisance activity occurring beyond city limits, however, poses a problem.

Likewise, it is well established that "the statute was not intended to displace common law actions to abate public nuisances."<sup>94</sup> The municipality, then, may attack a nuisance under applicable statutory language or revert to a common law action. The concept of common-law public nuisance "eludes precise definition."<sup>95</sup> The court in *Burris v. C.J.R. Processing, Inc.* approximated it as "an act or failure to act which injures the safety, health or morals of the public; or which causes substantial public annoyance, inconvenience or injury."<sup>96</sup> This definitional liquidity results in a liberal pleading requirement, as the existence of a nuisance will depend upon the individual facts presented in each instance.<sup>97</sup>

Through either the Public Nuisance Act or common-law nuisance, any nuisance affecting public welfare "may be abated in equity on the application of the proper officer."<sup>98</sup> However, where public officials<sup>99</sup> are faithfully discharging their law enforcement

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to a citizen of another state or to someone who lives where such weapons are already illegal).

89. 720 ILL. COMP. STAT. 5/47-5 (West 1996).

90. 720 ILL. COMP. STAT. 5/47-5(8) (West 1996).

91. BLACK'S LAW DICTIONARY 194-95 (6<sup>th</sup> ed. 1990).

92. 720 ILL. COMP. STAT. 5/47-5 (West 1996).

93. See *supra* text accompanying notes 5, 27 and 33 (listing Chicago gun control ordinances).

94. *City of Chicago v. Cecola*, 389 N.E.2d 526, 528 (Ill. 1979) (citing *People ex rel. Dyer v. Clark*, 108 N.E. 994, 996 (Ill. 1915)). See also *City of Chicago v. Festival Theater Corp.*, 438 N.E.2d 159, 162 (Ill. 1982) (noting coexistence of statutory and common-law nuisance).

95. *Gilmore v. Stanmar*, 633 N.E.2d 985, 993 (Ill. App. Ct. 1994).

96. *People ex rel. Burris v. C.J.R. Processing, Inc.*, 647 N.E.2d 1035, 1039 (Ill. App. Ct. 1995).

97. *Id.*

98. *Cecola*, 389 N.E.2d at 528.

99. *Stead v. Fortner*, 99 N.E. 680, 681 (Ill. 1912) (including as "public officials" members of the city council, city authorities, county court, county judges, and the circuit court grand jury).

duties, a court might properly decline to exercise equitable jurisdiction.<sup>100</sup> For example, the Illinois Supreme Court in *Stead* upheld an injunction against a dram shop owner who operated<sup>101</sup> in violation of a local "anti-saloon territory" ordinance.<sup>102</sup> The court enjoined the non-enforcement of this local law by local officials.<sup>103</sup>

In *Stead*, the municipality and county passed by popular vote a law outlawing saloons.<sup>104</sup> Despite the law, the city granted the defendant a liquor license.<sup>105</sup> He operated a saloon in violation of the local ordinance<sup>106</sup> that officials had failed to enforce.<sup>107</sup> After a grand jury refused to issue an indictment, the Illinois Attorney General intervened, using nuisance abatement<sup>108</sup> to enjoin the sale of intoxicating liquors by defendant.<sup>109</sup> The Illinois Supreme Court upheld the injunction.<sup>110</sup> The court reasoned that although the activity was already criminal and had a legal remedy, the non-enforcement of the law warranted injunction.<sup>111</sup>

The "complete" relief of an injunction protects not only against a current nuisance activity, but also against those acts that would constitute a nuisance in the future.<sup>112</sup> Courts have uniformly held that criminal prosecutions do not constitute "complete and adequate"<sup>113</sup> remedies, especially since criminal prosecutions enjoin only current activity.<sup>114</sup> Therefore, "public authorities have a right to institute the suit where general public welfare demands it and damages to the public are not susceptible to computation."<sup>115</sup> Invaded public rights are difficult to reduce to

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100. *Id.* at 684.

101. BLACK'S LAW DICTIONARY 494 (6th ed. 1990) (defining "dram shop" as a "drinking establishment where liquors are sold to be drunk on the premises; a bar or saloon").

102. *Stead*, 99 N.E. at 680. See also The Illinois Liquor Control Act, 235 ILL. COMP. STAT. 5/1 (West 1996).

103. *Stead*, 99 N.E. at 684.

104. *Id.* at 681-82.

105. *Id.* at 682.

106. *Id.*

107. *Id.*

108. *Stead*, 99 N.E. at 682.

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.* (citing *Barrett v. Mount Greenwood Cemetery Ass'n*, 42 N.E. 891, 893 (Ill. 1896)).

113. *City of Chicago v. Cecola*, 389 N.E.2d 526, 528 (Ill. 1979).

114. *Stead v. Fortner*, 99 N.E. 680, 682 (Ill. 1912).

115. *Id.* at 683. Ordinarily, an injunction orders the abatement of the use of the property in a manner harmful to the public health, safety, or morality. *Id.* See *People ex rel. Barret v. Fritz*, 45 N.E.2d 48, 53. (Ill. App. Ct. 1942) (explaining that "[i]t is the place of the nuisance which is enjoined.") However, the injunction need not be an order to abate a particular use of a property when the nuisance is away from the creator's property. *Stead*, 99 N.E. at 683. See generally RALPH E. BOYER, SURVEY OF THE LAW OF PROPERTY 310, 311 (3d

money damages because of the disparate impact particular nuisance activity may have on a segment of the public.

The term "public nuisance"<sup>116</sup> has an amorphous quality that resists direct definition due to the wide range of possible activity that it may encompass.<sup>117</sup> Nevertheless, the Illinois Supreme Court in *Stead* held that when seeking to abate a public nuisance, the question is whether there has been an invasion of a public right.<sup>118</sup> No property rights need be at issue in order to abate a public nuisance.<sup>119</sup> Initially, the enforcement of a nuisance action was against the property of the actor.<sup>120</sup> However, modern law has abandoned the property requirement, focusing instead on the activity causing the harm.<sup>121</sup>

### C. Injunctions

Whether the sale of a particular firearm falls within the reach of an under-enforced law or not, a court of equity is able to enjoin the sale as a public nuisance.<sup>122</sup> "It is a well recognized branch of equity jurisprudence to restrain, by injunction, public nuisances."<sup>123</sup> Recall, however, that an injunction is "an exceptional remedy, only granted with great caution."<sup>124</sup> A principle of equity is that an injunction will not issue except where there is no possibility of an adequate remedy<sup>125</sup> at law.<sup>126</sup> This

ed. 1981) (discussing nuisance abatement in relation to property).

116. GIFIS' LAW DICTIONARY 344 (4th ed. 1996) (defining "nuisance" as: a broad concept [in tort law] characterizing "the defendant's interference with the plaintiff's interests" . . . Public [Common] Nuisance [is] "an unreasonable interference with a right common to the general public . . . . It is behavior which unreasonably interferes with the health, safety, peace, comfort or convenience of the general community." A public nuisance offends the public at large or a segment of the public, a private nuisance offends only a particular person or persons.)

117. See 720 ILL. COMP. STAT. 5/47-5 (West 1996) (listing nuisances within statute).

118. *Stead*, 99 N.E. at 683.

119. *Id.* See Boyer, *supra* note 115, at 310-13 (discussing injunctions abating property nuisances).

120. Boyer, *supra* note 115, at 311.

121. *Id.* at 312-13.

122. See *Bubalo v. Navegar, Inc.*, 1998 WL 142359 at \*4-\*5 (N.D. Ill. 1998) (dismissing nuisance suit against gun manufacturer due to deficient pleading, while noting in dicta that the theory may be effective). See also *Grayned v. City of Rockford*, 408 U.S. 104, 116-17 (1972) (upholding injunction against the picketing of school due to a labor dispute, illegal under a municipal ordinance, as constitutional limitation on time, place, and manner); *People ex rel. Barret, Attorney General v. Fritz*, 45 N.E.2d 48, 52 (Ill. App. Ct. 1942) (holding that the courts of equity may use their injunctive powers to abate either a public nuisance or private nuisance).

123. *Stead v. Fortner*, 99 N.E. 680, 682 (Ill. 1912) (quoting *Barret v. Mount Greenwood Cemetery Ass'n*, 42 N.E. 891 (Ill. 1896)).

124. *City of Chicago v. Stern*, 421 N.E.2d 260, 261 (Ill. App. Ct. 1981).

125. GIFIS' LAW DICTIONARY 430 (4th ed. 1996) (defining "remedy" as "the

principle focuses upon the qualitative effect of the remedy rather than its existence.

If remedies at law or other methods of redress are inadequate, the injury is considered irreparable, but this must first be proven.<sup>127</sup> The allegation that no adequate remedy exists at law must be based in fact.<sup>128</sup> Merely alleging the existence or threat of multiple actions by the defendant is insufficient.<sup>129</sup> “[I]rreparable injury is not an independent requirement for obtaining a permanent injunction; it is only one basis for showing the inadequacy of the legal remedy.”<sup>130</sup>

In public nuisance actions, the purpose of providing equity jurisdiction is “to offer remedies more complete than those available at law.”<sup>131</sup> For a legal remedy to be adequate, “the remedy ‘must be clear, complete, and as practical and efficient to the ends of justice and its prompt administrations as the equitable remedy.’”<sup>132</sup> However, with respect to handgun sale restrictions, existing laws allow the very activity that municipalities may seek to enjoin,<sup>133</sup> that is, mere enforcement still permits the straw purchaser and profiting seller to continue business as usual.<sup>134</sup> Accordingly, a judicial order to obey the law, standing alone, does not remedy the problem.

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means employed to enforce or redress an injury”). “The most common remedy at law consists of money damages.” *Id.* An action at law is a “judicial proceeding whereby one party prosecutes another for a wrong done, or for protection of a right or prevention of a wrong; at common law, to be distinguished from an action in equity which could not be brought before the law courts but only before a court of equity.” *Id.* at 9.

126. *City of Chicago v. Festival Theater Corp.*, 438 N.E.2d 159, 167 (Ill. 1982) (citing *LaSalle Nat’l Bank v. County of Cook*, 312 N.E.2d 252 (Ill. 1974)).

127. *Fleet Wholesale Supply Co. v. Remington Arms Co.*, 846 F.2d 1095, 1098 (7th Cir. 1988). *See also* *Fort Wayne Women’s Health Org. v. Brane*, 895 F. Supp. 1080, 1090 (N.D. Ind. 1990) (discussing irreparable injury in relation to injunctive remedies). *See supra* note 125 (defining remedy at law).

128. *Betts v. State Dep’t of Revenue*, 396 N.E.2d 1150, 1154 (Ill. App. Ct. 1979).

129. *Bubalo v. Navegar, Inc.*, 1998 WL 142359 at \*1 (N.D. Ill. 1998). *See* *City of Sterling v. Speroni*, 84 N.E.2d 667, 672 (Ill. App. Ct. 1949) (holding that repeated violations of criminal law paired with stated intention to continue violating the law creates a need to abate through equity).

130. *Fort Wayne Women’s Health Org.*, 895 F. Supp. at 1082 (citing *Jennings Water, Inc. v. City of North Vernon, Ind.*, 895 F.2d 311, 318 n.6 (7th Cir. 1989)).

131. *City of Chicago v. Festival Theater Corp.*, 438 N.E.2d 159, 167 (Ill. 1982) (citing *People ex rel. Kerner v. Huls*, 189 N.E. 346, 348 (Ill. 1934)).

132. *Id.*

133. *See* 27 C.F.R. § 178.100 (c) (1988) (allowing transfers and sales without Brady check requirements at gun shows).

134. *Id.*

*D. Where the Equity Powers of Courts Have Succeeded and Where Laws Have Failed*

When exercising its equity powers, a court must also consider the policy implications of its decision.<sup>135</sup> The court must balance the costs of issuing an injunction against the costs of refusing to do so.<sup>136</sup> The District Court for the Northern District of Indiana expressed this theory in the form of an equation:

$$P_{\text{success}} * H_{\text{plaintiff}} > (1 - P_{\text{success}}) * H_{\text{defendant}}$$

where  $P_{\text{success}}$  is the probability of plaintiff's success on the merits and  $H$  is the harm of judicial error against the plaintiff.<sup>137</sup> While this equation is at best a tool of estimation, it suggests that an increase in possible harm should encourage judicial intervention through injunction.<sup>138</sup> Minor harm coupled with a low probability of success, by contrast, rarely merits injunction.<sup>139</sup> However, where the harm is severe, as it is with illegal handgun use (e.g., death, severe injury or endangerment), even a low probability of success warrants injunctive relief.<sup>140</sup> So long as a chance exists to continue to sell weapons, mere monetary damages to the business of the weapons dealer does not prevail in the balancing test.<sup>141</sup>

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135. See GIFIS' LAW DICTIONARY 172, 173 (4th ed. 1996) (defining equity as most generally, "justice." Historically, "equity" developed as a separate body of law in England in reaction to the inability of the common law courts, in their strict adherence to rigid writs and forms of action, to entertain or provide a remedy for every injury. The King therefore established the high court of chancery, the purpose of which was to administer justice according to principles of fairness in cases where the common law would give no or inadequate redress. Equity law to a large extent was formulated in maxims, such as "equity suffers not a right without a remedy," or "equity follows the law," meaning that equity will derive a means to achieve a lawful result when legal procedure is inadequate. Equity and law are now no longer bifurcated but are now merged in most jurisdictions, though equity jurisprudence and equitable doctrines are still independently viable.)

136. *Fort Wayne Women's Health Org. v. Brane*, 895 F. Supp. 1080, 1082 (7th Cir. 1989).

137. *Id.*

138. See JAN GULLBERG, *MATHEMATICS: FROM THE BIRTH OF NUMBERS* 270-72 (1997) (explaining that an increase or decrease in probability of an event occurring has increasing effect as the solution approaches zero (the event does not occur) or one (the event does occur)).

139. See *id.* (discussing how a relative decrease in harm to the victim, or increase in costs to the defendant, will tend to tip the balance in an equity decision to the defendant's favor).

140. See *id.* (discussing how an increase in harm to the plaintiff, or minimal cost to the defendant, will tip the equity scales to the plaintiff's favor).

141. See *id.* at 961-67 (noting that infinite harm multiplied by a very small probability of success for the plaintiff is still an infinitely large number).

A court must try to minimize errors that occur in ordering an injunction; that is, the harm in ordering an injunction must be less than the harm caused if the order is erroneously withheld.<sup>142</sup> The judge must balance the possible risk of harm to the plaintiff against the possible risk of harm to the defendant and attempt to minimize the resulting risk should an injunction be erroneously issued or withheld.<sup>143</sup> The balance courts must make in these situations is between the injury to the defendant, who suffers due to the loss of use of property, and injury to the plaintiff, who suffers from use of defendant's property against him.

#### *E. Enjoining Lawful but Harmful Activity of Handgun Sales*

Courts sitting in equity "will not gamble with human life."<sup>144</sup> Courts justify this position on the grounds that "for loss of life there is no remedy that is in an equitable sense adequate."<sup>145</sup> To this end, Illinois courts have enjoined otherwise legal activity to promote greater public safety.<sup>146</sup> Similarly, courts in other jurisdictions have held that activity threatening human life may be enjoined.<sup>147</sup>

In *Resident Advisory Board v. Rizzo*, local residents protested the construction of public housing through picketing and use of loudspeakers.<sup>148</sup> Their interference with instructions and communication between workers resulted in safety hazards and injury.<sup>149</sup> Weighing the possible First Amendment rights of free speech against the probability of injury, the court enjoined the use

142. *Fort Wayne Women's Health Org.*, 895 F. Supp. at 1082 (noting the necessary nature of error minimization in an equity decision).

143. *Fleet Wholesale Supply Co. v. Remington Arms Co.*, 846 F.2d 1095, 1097 (7th Cir. 1988).

144. *Resident Advisory Bd. v. Rizzo*, 503 F. Supp. 383, 389 (E.D. Pa. 1980).

145. *Id.*

146. See *City of Chicago v. Cecola*, 389 N.E.2d 526, 528-29 (Ill. 1979) (upholding injunction against operation of a "leisure spa"); *United Mine Workers of Am. Union Hosp. v. United Mine Workers of Am.* Dist. No. 50, 288 N.E.2d 455, 458 (Ill. 1972) (enjoining strike to keep hospital open); *Board of Ed. v. Kankakee Fed'n of Teachers*, 264 N.E.2d 18, 444-45 (Ill. 1970) (upholding injunction against strike and picket of schools); *Joos v. Illinois Nat'l Guard*, 100 N.E. 505, 508-09 (Ill. 1912) (upholding injunction against use of leased rifle range in favor of safety of adjacent farmer and his workers); *Kolstad v. Rankin*, 534 N.E.2d 1373, 1380 (Ill. App. Ct. 1989) (enjoining use of firing range because of threatened injury); *Peters v. South Chicago Community Hosp.*, 246 N.E.2d 840, 843 (Ill. App. Ct. 1969) (enjoining strike in favor of hospital); *City of Chicago v. Cecola*, 389 N.E.2d 526, 528-29 (Ill. 1979) (upholding injunction against operation of a "leisure spa").

147. See *Rizzo*, 503 F. Supp. at 389; see also *Seide v. Prevost*, 536 F. Supp. 1121, 1133 (S.D.N.Y. 1982); *Harris Stanley Coal & Land Co. v. Chesapeake Ry. Co.*, 154 F.2d 450, 453 (6th Cir. 1946); *Portland Feminist Women's Health Ctr. v. Advocates for Life, Inc.*, 859 F.2d 681 (9th Cir. 1988).

148. *Rizzo*, 503 F. Supp. at 385.

149. *Id.* at 387-88.

of the loudspeaker during construction hours in favor of worker safety.<sup>150</sup>

Similarly, the court in *Seide v. Prevost* did not wait until actual injury occurred to enjoin activities "which threaten[ed] human life."<sup>151</sup> Activities that threaten human life are judicially cognizable prior to any resulting physical injury or death.<sup>152</sup> The court reasoned that "[t]o deny recourse to the courts simply because physical injury has not yet occurred would manifest a callous disregard for the safety of [those] who are unable to protect themselves."<sup>153</sup> The court delimited the broad stroke of this language, later noting that a single threat will not necessarily constitute a legally recognizable claim without a preceding pattern of behavior constituting significant risk.<sup>154</sup>

The Court of Appeals for the Sixth Circuit held that the judiciary should favor safety at all costs since there is no equitable relief for loss of life.<sup>155</sup> While no injury had yet occurred, "possible future injuries may be enjoined, [citations omitted] and suits are not premature because the plaintiff does not await an actual test of the results of a proposed or threatened act."<sup>156</sup> Recently, the Ninth Circuit followed the Sixth Circuit's lead in *Portland Feminist Women's Health Ctr. v. Advocates for Life, Inc.*<sup>157</sup> The court held that a twenty-five foot "free zone" around an abortion clinic could be imposed,<sup>158</sup> finding that the interest of protecting the patients overrode the freedom of speech rights of the abortion protesters.<sup>159</sup>

The injunctions issued in these cases bear a strong similarity to those ordered in Illinois.<sup>160</sup> Courts of equity confront an activity that, although technically legal, poses a distinct and measurable threat of harm to human life.<sup>161</sup> The general judicial reaction is to

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150. *Id.* at 389.

151. *Seide*, 536 F. Supp. at 1133 (upholding injunction protecting the institutionalized mentally ill from an adjacent municipal homeless shelter).

152. *Id.*

153. *Id.*

154. *Id.*

155. *Harris Stanley Coal & Land Co. v. Chesapeake Ry. Co.*, 154 F.2d 450, 453 (6th Cir. 1946).

156. *Id.* (enjoining renewed mining activity near passenger rail line after previous mining company removed safety bracing and tracks, where renewed mining posed a threat to rail line and passengers).

157. 859 F.2d 681 (9th Cir. 1988).

158. *Id.* at 686.

159. *Id.*

160. See *City of Chicago v. Cecola*, 389 N.E.2d 526, 528-29 (Ill. 1979) (exemplifying an Illinois case where potentially harmful activity was enjoined in favor of increased public safety).

161. See BLACK'S LAW DICTIONARY 980 (6th ed. 1990) (defining "measure of damages" as "the rule, or rather system of rules governing the adjustment or apportionment of damages as a compensation for injuries in actions at law").

enjoin those activities in promotion of the health, safety and welfare of the public.<sup>162</sup> Accordingly, for the courts to directly enjoin the sale of firearms to residents of communities where they are outlawed is actually a small step.

### III. ENJOINING HANDGUN SALES

Municipalities have the duty to protect the health, safety, and welfare of the citizens within their borders.<sup>163</sup> This duty and the related powers are derived through the states from the U.S. Constitution.<sup>164</sup> In furtherance of this duty, state legislatures empowered municipalities to abate nuisances.<sup>165</sup> When not legislatively delegated, municipalities retain this power through existing common law.<sup>166</sup> As a unique application of this power, a municipality may use its nuisance abatement power to halt the lawful sale of handguns, which are increasingly obtained legally and used illegally within city limits.<sup>167</sup>

#### A. Municipal Nuisance Abatement Power

A municipality may exercise nuisance abatement power to halt activity harming the health, safety or welfare of the local people.<sup>168</sup> The sale of handguns in adjacent communities, though lawful in many instances, has a distinct impact upon the safety

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162. See *United Mine Workers of Am. Union Hosp. v. United Mine Workers of Am.* Dist. No. 50, 288 N.E.2d 455, 458 (Ill. 1972) (noting another example of an Illinois case where potentially harmful activity was enjoined in favor of increased public safety).

163. See Illinois Public Nuisance Act, 720 ILL. COMP. STAT. 5/47-5 (West 1996) (listing activities considered to be public nuisances).

164. U.S. CONST. amend. X. "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." *Id.* Municipal corporations, cities, and towns are political subdivisions of the state. BLACK'S LAW DICTIONARY 1017, 1159 (6th ed. 1990).

165. Illinois Public Nuisance Act, 720 ILL. COMP. STAT. 5/47-5 (West 1996). See also *City of Chicago v. Festival Theater Corp.*, 438 N.E.2d 159, 162 (Ill. 1982) (explaining the balance between the Public Nuisance Act and its predecessor, common law public nuisance).

166. *Festival Theater*, 438 N.E.2d at 162. See also *People ex rel. Dyer v. Clark*, 108 N.E. 994, 996 (Ill. 1915) (noting that the statute enumerating what activities constitute a public nuisance was not intended to be exhaustive).

167. Ray Risley, *A Police Officer's Perspective On Gangs, Drugs And Guns On The Streets Of Chicago*, THE COMPILER, Fall 1998, at 4 (published by the Illinois Criminal Justice Information Authority in Chicago, Illinois). "From 1985 through 1997, the Chicago Police Department seized approximately 220,000 firearms—an average of almost 17,000 per year." *Id.* From 1985 through 1994, however, the murder rate in Chicago rose 80%. *Id.* The number of firearms seized per year by the City of Chicago Police Department and the homicide rate in Chicago, while not necessarily correlated, share at a minimum a strong association. *Id.*

168. Illinois Public Nuisance Act, 720 ILL. COMP. STAT. 5/47-5 (West 1996).



and health of neighboring cities.<sup>169</sup> Chicago should exercise its abatement power through the courts of equity to enjoin the sale of handguns to Chicago residents in surrounding "collar" communities. The purpose of such action is to inhibit sales to straw purchasers or those purchasers residing in gun-outlawing cities. This is especially necessary where such parties are likely to illegally transport or transfer their handgun purchases to criminal elements within those cities.

A court using its powers of equity may enjoin harmful activity that is technically legal when the harm prevented is serious or of a permanent (not readily reducible to damage calculations) nature.<sup>170</sup> Due to the lethal nature of guns in general, a court might reasonably find the burden on the commercial rights of the dealers to be minimal compared to the injuries or fatalities caused by lawfully purchased guns. The municipality should seek such an injunction from the court to enjoin such activity in the interest of the public health, safety and welfare.<sup>171</sup> Here, the potential benefits outweigh the potential economic losses.<sup>172</sup>

In order to be effective, these injunctions must extend beyond geographic and political boundaries.<sup>173</sup> Where such injunctions are

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169. *Facts on the Use*, *supra* note 45, at 15 (published by the Illinois Criminal Justice Information Authority in Chicago, Illinois). Of all traceable gun-related homicides in Chicago where the type of weapon was ascertained, 96% were handguns and of these, 61% were semiautomatic pistols. *Id.* "Firearms were used in 10,744, or 67.8[%], of the 15,848 murders reported in the United States in 1996 (FBI)." *Id.* at 17. See also *Daley's Unwise Anti-Gun Gambit*, CHI. TRIB., Nov. 14, 1998, § 1, at 26 (noting 570 gun-related homicides during 1997 within Chicago, Illinois); *Lawsuits Against Handguns*, N.Y. TIMES, Nov. 14, 1998, at A26 (editorializing on the heavy toll that gun violence places upon urban America residents).

170. *Grayned v. City of Rockford*, 408 U.S. 104, 120 (Ill. 1972); see also *People ex rel. Barrett v. Fritz*, 45 N.E.2d 48, 52 (Ill. App. Ct. 1942) (holding that a court may abate a nuisance through equity powers).

171. *United Mine Workers of Am. Union Hosp. v. United Mine Workers of Am.* Dist. No. 50, 275 N.E.2d 231 (Ill. App. Ct. 1971) (upholding injunction imposed by lower court in favor of hospital employer in the interests of patient safety).

172. See *Lawsuits Against Handguns*, *supra* note 169, at A26 (observing that the benefits to be gained are fewer deaths or violent injuries attributable to handguns, compared with the solely economic losses to a relatively smaller group of gun dealers). Chicago recently filed a \$433 million lawsuit to recover the costs associated with gun violence. *Id.* From 1994 through 1997, the rates of gun seizures and firearm homicides have decreased in Chicago. Risley, *supra* note 167, at 4.

173. See *City of Chicago v. Beretta U.S.A. Corp.*, (Cir. Ct. Cook Cty., Ill., filed Nov. 13, 1998) (naming 12 retail gun dealers, 22 American distributor/manufacturers and four foreign distributor/manufacturers as defendants in lawsuit where only one named defendant resides within the city limits of Chicago). The retail dealers are from the surrounding suburbs of Lincolnwood, Franklin Park, Bensenville, Elmwood Park, Melrose Park, Lyons, Justice, Burbank, Chicago Ridge, Oak Lawn, and Riverdale. *Id.* Of the

necessary, courts may retain jurisdiction over the underlying cause of action while allowing municipalities to extend the injunction beyond its normal municipal reach. Accordingly, municipalities should petition the courts of equity to enjoin the lawful but harmful sale of firearms in adjacent communities where such sales have a negative impact upon the public health, safety and welfare.

### *B. An Application of Restricting a Handgun Sale*

The proposed course of action is simple: first, apply for an injunction from the court of equity; second, demonstrate damage caused by gun violence; third, link the violence and damage to gun shops operating in collar communities; and fourth, demonstrate to the court that the potential harm to the public outweighs the economic loss to the gun dealers.<sup>174</sup> An injunction should issue even where criminal penalties exist because lax enforcement of those laws inadequately deters such activity.

Similarly, applying this process to the scenario set forth at the beginning of this Comment is uncomplicated. The City of Chicago need only trace the weapon to Jim,<sup>175</sup> show that the weapon was used in a crime, and demonstrate that the harm<sup>176</sup> (or the potential harm<sup>177</sup>) resulting from a crime committed with that weapon outweighs Jim's potential economic loss. A court would then weigh the evidence and enjoin Jim from selling handguns to Chicago residents. This process would have prevented the chain of

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distributor/manufacturers, only Faber Brothers, Inc. is from Chicago. *Id.* at 6-

8. The remaining defendants are from outside of Illinois:

STATE	NUMBER OF DEFENDANTS
California	Seven
Florida	Three
Connecticut	Two
Massachusetts	Two
Ohio	One
Georgia	One
Indiana	One
Maryland	One
Utah	One
Nevada	One

*Id.* Two additional defendants are foreign corporations. *Id.*

174. See *supra* notes 138-140 and accompanying text (discussing the factors courts may balance when weighing whether an injunction should issue).

175. See *supra* note 2 (noting hypothetical based on confidential actual events).

176. See GIFIS' LAW DICTIONARY 124 (4th ed. 1996) (defining "actual damages" as "those damages directly referable to the breach or tortious act; losses which can readily be proven to have been sustained, and for which the injured party should be compensated as a matter of right").

177. See *Gilmore v. Stanmar*, 633 N.E.2d 985, 992-93 (Ill. App. Ct. 1994) (noting that courts of equity enjoin activity based on both potential harm and current harm).

events that resulted in the death of a Chicago Police Officer.

### CONCLUSION

Our society arose from armed revolution.<sup>178</sup> It has since witnessed conflict culminating in the most violent century the world has yet known.<sup>179</sup> Concurrent with this violent evolution grew the belief that all citizens should be allowed to arm themselves as a matter of right.<sup>180</sup>

The freedom of law-abiding citizens to possess guns necessarily facilitates acquisition of guns by criminal elements within society. The impact of gun violence upon cities comprises economic damage, pain, suffering and loss of life. Abatement through injunction would suppress a pipeline of weapons to criminals. Accordingly, municipal governments may improve the quality of life of their citizens by controlling this type of trade through stringent gun control laws<sup>181</sup> and by actively seeking injunctions to prevent handgun sales to criminals.

While this is not the ultimate solution, it is a useful tool to restrain gun violence within our cities. Criminals will always have access to weapons. This proposed approach will at least disrupt one of the ports of entry. Even the longest journeys begin with a single step.<sup>182</sup>

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178. See, e.g., E.D. HIRSCH ET AL., *THE DICTIONARY OF CULTURAL LITERACY* 245, 269-70 (2d ed. 1993) (surveying U.S. History from the American Revolution to the Twentieth Century).

179. *Id.*

180. Donald W. Dowd, *The Relevance of the Second Amendment to Gun Control Legislation*, 58 MONT. L. REV. 79, 85 (1997) (discussing popular United States Supreme Court arguments regarding the Second Amendment "right to keep and bear arms" and general misunderstanding of the meaning of that phrase).

181. *Lawsuits Against Handguns*, *supra* note 169, at A26. Chicago "has some of the nation's strictest gun control laws." *Id.*

182. The Author would like to thank ACR for her tireless help, gracious editorial eye and constant encouragement.