

ADVISORY OPINION

BEWARE OF THE “PUBLIC NUISANCE” LAWSUIT

by Timothy Lynch

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City governments are unveiling a new weapon to combat crime: the “public nuisance” lawsuit. The City of Chicago, for example, made national headlines in November when it sued gun manufacturers and local gun shops for \$433 million. The lawsuit says the gun industry causes a public nuisance by flooding Chicago with illegal weapons—thereby creating excess costs for that city’s police, fire department, and hospitals. The Chicago lawsuit is being touted as a “model” that other cities will want to emulate.

The Chicago lawsuit is disturbing for several reasons. The first thing to note is that the gun industry is not being accused of violating the city’s myriad gun control ordinances. Rather, the legal theory underlying the lawsuit is that the gun industry’s marketing and distribution network in the Chicago suburbs is not unlike a suburban industrial plant that is polluting the city’s water supply. “The gun manufacturers are saturating gun stores just outside Chicago’s border with far more guns than the lawful gun market could possibly absorb, because they know there is a large, illegal market for guns in the city,” explained one city official. The gun industry’s “pollution” is therefore legally actionable.

Second, it is important to note that the Chicago lawsuit would apply with equal force to gun manufacturers and dealers who do not engage in any business in the entire State of Illinois. If one follows the logic of the “pollution”

metaphor, the only thing that matters is that guns find their way to the streets of Chicago. A gun dealer in southern Arizona is therefore potentially liable. Thus, the practical effect of the public nuisance theory is that the gun industry can be sued for making a lawful product and engaging in lawful transactions. Compliance with the law is no defense!

Although Chicago’s lawsuit has received a great deal of publicity for its novel legal theory, state and local governments have bludgeoned others with public nuisance lawsuits—but on a much smaller scale. Owners of apartment buildings and hotels in the inner city have been sued by city governments for their failure to prevent criminal activity. If a court finds the owner’s premises to constitute a nuisance, the owner could be fined and his building could be shut down for up to a year.

Public nuisance lawsuits are perverse. If the police can’t prevent drug transactions and prostitution activity, what makes the city government think that a landlord can stop crime? Most businesspeople do not want crime in their neighborhood because it drives customers away and reduces the value of their property. But there is an understandable reluctance to confront drug dealers and gang members—and an understandable frustration when phone calls to the police are placed, but no action is taken.

The real purpose behind public nuisance lawsuits seems to be social engineering. The lawsuits

are filed in order to drive the owner of a business into settlement negotiations. For example, in 1992 the City of Los Angeles pressured the owners of a 7-Eleven store into reducing hours, hiring guards, getting rid of popular video games, and halting liquor sales—so as to keep gang members from using the location as a meeting place.

Punishing law-abiding businesspeople is a curious way to combat crime. But the old days when the police simply sought to solve a crime, apprehend the suspect, and bring him to trial seem to be over. The modern “war against crime” requires active citizen participation. That convenient arrangement allows the government to take credit when the war news is good and blame the citizenry for dereliction of duty when the war news is bad.

Chicago officials cannot bring themselves to admit that their gun control policy has failed. So instead of acknowledging failure, they shift blame to the gun industry and shake it down for millions of dollars. If the American people are fooled into thinking that Chicago’s politicians are actually solving a social problem, more cities will file lawsuits to get in on the action.