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## MEMBERSHIP

The Sporting Arms and Ammunition Manufacturers' Institute (SAAMI) is a trade association consisting of the nation's leading manufacturers of sporting firearms and ammunition. Founded in 1926, the organization has been actively involved in the publication of industry standards, coordination of technical data, and the promotion of safe and responsible firearms use. Its members include:

- Beretta USA
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S A A M I

SPORTING ARMS AND AMMUNITION MANUFACTURERS' INSTITUTE, INC.

Founded 1926

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# “ABSOLUTE LIABILITY”

A Logical Analysis  
of an  
Illogical Legal Theory

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Background Paper #7

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## INTRODUCTION

The concept of absolute liability is a relatively new and an extremely radical legal theory.

Summarily dismissed and rejected by trial and appellate courts when first advanced in the 1980's, the absolute liability theory has been resurrected of late by a contingent of plaintiffs' attorneys whose motivation would appear to be more legal shenanigans than legal justice.

In its simplest terms, absolute liability holds that the manufacturer of a non-defective firearm (and theoretically any other product) should be held absolutely liable for any damage that results from the use of that product — including blatant criminal misuse. Under the theory of absolute liability, there is no consideration for how carefully a product may have been manufactured, no consideration for how responsibly it may have been marketed and no consideration for how many laws may have been violated in the course of an individual obtaining or using the firearm. All that matters is that if you made it and it is used to intentionally injure someone, you are liable — no defense, regardless of circumstances.

## BACKGROUND

In reviewing the rationale for the concept of absolute liability, it is appropriate and enlightening to consider the motivation behind the concept.

Absolute liability is not sought by firearms consumer groups seeking relief from injuries caused by a grossly defective product. It is not a concept advanced by a significant number of judges or attorneys seeking to correct a major flaw in the legal system, and it is not proposed by the Congress or state legislatures acting in response to a new societal need.

The impetus behind the concept of absolute liability comes, instead, from trial lawyers seeking to gain financial awards and to further a political agenda. The plaintiff's bar is actually funding some of these efforts.

In the early 1980's, a number of product liability lawsuits were filed seeking to hold the manufacturers of firearms "absolutely liable" for damages resulting from the criminal misuse of their product. These lawsuits did not suggest that the products were defective or that the manufacturers were negligent. The only claim was that manufacturers of a product — in these cases a firearm — should be absolutely responsible for any injuries caused by that product — even if those injuries were the result of an illegal act. **We do not know if these enterprising plaintiffs' attorneys planned to expand this legal theory to automobiles, baseball bats or gasoline if they were successful, because fortunately they were not. As law and common sense would dictate, all of these cases were either summarily dismissed as a matter of law or rejected by juries.** An ill-conceived chapter in legal history should have ended there, but has not.

As part of an extreme "gun control" effort, funded in part by trial lawyers, some plaintiffs are again seeking money damages under this failed legal theory. Some legislatures are also being requested to enact this type of unprecedented product liability against firearm and ammunition manufacturers, again by "anti-gun" special interest groups.

**The fact that venerable, responsible manufacturers of sporting firearms might be put out of business, and thousands made jobless, as a result of such convoluted legal theory is of no concern to the purveyors of the absolute liability concept. Indeed — it is their intention. Almost certainly under this theory, all manufacturing of firearms and ammunition could cease, and the manufacturer of every single product now in existence would still be subject to ruinous financial liability, without any defenses whatsoever. Police and armed forces would be without a source of firearms. And yet, criminals would be completely unaffected by "absolute liability" unfairly imposed upon lawful manufacturers.**

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## GENERAL COMMENTS

Commerce in firearms is regulated by thousands of federal, state and local laws and regulations. A firearm produced by a federally licensed manufacturer in Connecticut, for example, may be shipped to a federally licensed distributor in Ohio and then to a federally licensed retailer in California for sale to the individual user. The serial number of the firearm and identity of the purchaser is recorded during each and every stage of this transaction. The firearm might be used for many years by its original owner in target shooting competitions or for hunting. However, if it is stolen from its lawful owner, illegally sold to a gang member and used in a serious crime, the manufacturer of that firearm would be held liable for its criminal use, according to the theory of absolute liability.

While the current absolute liability effort focuses on firearms, it would establish a precedent for other legislation directed at manufacturers and sellers of any type of product —whether it be toys, mopeds, knives, pharmaceuticals, skateboards, swimming pools or any other product which the plaintiffs' lawyers deemed undesirable for any reason.

The theory of liability for "ultrahazardous activity," sometimes cited as a precedent for absolute liability, has only been applied in cases in which the person in control of an "ultrahazardous activity" has caused harm. Thus, we do impose liability upon users of dynamite for any damages that may result from its use. **But we do not impose that liability on the manufacturer of the dynamite.** Similarly, we penalize drunk drivers harshly, but we do not impose absolute liability upon manufacturers of nondefective alcohol or automobiles.

Firearms and ammunition are subject to exactly the same product liability laws as any other product. If they are found to be "defective" in design or manufacture (the pre-requisite for any product liability) their manufacturers must pay damages. "Absolute liability" would impose manufacturer's liability for defectless products, which is absolutely without precedent.

## PUBLIC POLICY ISSUES

The members of The Sporting Arms and Ammunition Manufacturers' Institute, and their employees, share with all Americans a concern about the scourge of violent, often drug-related crimes in the country—particularly in urban areas. However, SAAMI does not believe that imposing responsibility for the consequences of these illegal activities on those who lawfully and responsibly manufacture firearms will deter criminals from engaging in criminal acts.

**SAAMI believes that to hold a manufacturer financially responsible for the illegal and criminal use of a lawfully manufactured and regulated product is an inversion of responsibility and an irrational and ineffective policy response to a societal — not a product-liability— problem.**

It must be asked, **if a firearm manufacturer should be held absolutely liable for injuries resulting from the criminal misuse of his non-defective product, does it follow that the same manufacturer should also be held liable for injuries resulting from the lawful use of his product**, i.e. injury to a criminal by a homeowner or law enforcement officer acting in self defense?

The answer is obvious — no product becomes legally or mechanically "defective" simply because a person intentionally misuses it.

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## LEGAL AND CONSTITUTIONAL ISSUES

The theory of absolute liability is a distortion of the well-established legal concept of strict product liability and is not law in any of the 50 states. For a manufacturer to be held strictly liable, there must be something wrong with the product which proximately causes an injury. In the case of a firearm, the product remains the same whether it is used for hunting, law enforcement, personal protection, organized competition, or is intentionally misused by a criminal. The advocates of absolute liability suggest that the firearm became defective when, but only when, it was used illegally.

Understandably, there is no legal precedent which holds that a product, including a firearm, can be considered "defective" at such time that it might be used illegally. The vast majority of firearms are used safely and responsibly, as intended by their manufacturers.

Courts in at least 24 states have wisely and properly rejected this theory, including Ohio, New Mexico, Florida, Texas, Massachusetts, New York, Kentucky, Georgia, Illinois, Mississippi, Washington, Louisiana, Alaska, Oregon, Rhode Island, Pennsylvania, Tennessee, Colorado, Hawaii, Michigan, California, Missouri, and Wisconsin. In Maryland, one court supported a version of this theory, but it was legislatively abrogated in the very next session of the legislature. Some states, such as California, have actually forbidden such "absolute liability" lawsuits by statute.

The notion of absolute liability also contravenes established Constitutional principles. It is fundamentally unreasonable and capricious and thus violates substantive due process.

## CONCLUSION

SAAMI opposes absolute liability for the manufacturers of firearms, ammunition or any other product, and urges its continued rejection. SAAMI believes that to hold any manufacturer absolutely responsible for the deliberate and criminal misuse of their lawful and defectless product, **is an inappropriate public policy, an illogical response to societal problems, and has serious legal and Constitutional flaws.**

**Many of those who support the concept of absolute liability acknowledge that their primary motivation is to eliminate or dramatically reduce the manufacture and distribution of firearms,** even though the activity is lawful, licensed, and sanctioned by the Federal and State Governments. Firearms are lawful products, used responsibly by millions of Americans. The opportunity of these individuals to lawfully use and own firearms should not be denied by the whims of those who seek to curtail firearms production to satisfy their own personal, financial or political agendas.

**The members of The Sporting Arms and Ammunition Manufacturers' Institute reject the concept of absolute liability as contrary to law and common sense and not in the best interest of the American public. The criminal misuse of legitimate products is a criminal justice issue and should be treated as such.**