

The Insurance and Real Estate Committee

Tuesday, March 19, 2013 at 1:00 P.M. in Room 2C

**Good Afternoon:**

My name is Brooke Cheney and I am from Harwinton. I am a mom, a blueberry farmer, a competitive shooter, a volunteer in my children's schools and a pistol instructor. For those of you who don't know, as a pistol instructor I am one of the 1<sup>st</sup> people to meet new shooters as they are in the application process for a permit.

The first true measurement of light-speed came in 1676 by a fellow named Olaf. He calculated that the speed of light was something like  $2.14 \times 10^8$  meters per second. Once we knew that light had velocity, we could now ask ourselves important questions. Questions like, "If you were in a car going the speed of light and you turned on the head lights would anything happen?"

As you sit there, you may be wondering what this has to do with insurance for gun owners. It has nothing to do with it. Just as insurance for gun owners has nothing to do with stopping violence.

Insurance for gun owners, makes owning a gun available to only the privileged few that can afford it. It creates a market for insurance where there wasn't one before. I cannot understand how the government can decide to create a market that does nothing but make money for an insurance company and does nothing to serve the people. There are approximately 170,000 handgun permit holders in Connecticut. The state mandates that people must buy a product, that previously had little or no market. Now it will have a market of at least 170,000 customers. How is this even legal for the state to do?

Over the last 3 months I have done research, trying to find real solutions to violence in our communities. My thought being that with all this attention being paid, we could make a change for the better. I have looked at AFT, FBI, DOJ, US Department of Justice, US Department of Education and more. I have talked to city leaders, police officers across our state, mental health workers, school administrative staff, and many other disciplines, all who have plenty of real world experience in dealing with the problems we face. What have I learned? No law will ever stop a crime.

What does stop crime? Building strong neighborhoods and communities and by having funding for after school programs and salaries for additional police officers. These are the types of ideas I am not hearing about here in the legislative building. Instead I am here, one more day away from my family to ask you to stop trying to implement proposed legislation like Raised Bill No. 6656 and to implore you to start looking at the solutions that will have a positive and meaningful impact on CT as a whole and start healing our state.

Thank you for your time and consideration in this matter. I leave you with this: If I could snap my fingers and make all the guns in the world go away, we would still have violence. If I could snap my fingers and end violence, it wouldn't matter that we had guns.

I have included some more information for you. I also have some of the research posted online at [www.savethousandsnotjustone.info](http://www.savethousandsnotjustone.info)

Simple Math\* – Approximately 323,000,000 guns in America. In 2011 FBI reports 8,583 guns were used to commit murders. So of all the guns in America 0.003% were used to cause a malicious death. I really don't see how it's a gun problem. – Source for the numbers is on savethousandsnotjustone.info

Some examples of how this type of insurance actually works:

Act of self-defense precludes insurance coverage

- by Roger McEowen

A famous case decided by the Iowa Supreme Court in 1971 illustrates that an individual is not privileged to use force in defending property in excess of that reasonably believed to be necessary and cannot use such force as is likely to lead to great bodily injury or death. However, an individual can exert force that is likely to take a life if the person has a reasonable belief that their own life may be taken if they don't act. But, what about insurance coverage in such a situation? That was the issue in this case.

A woman was at home with her three small children when she was attacked by two intruders. After being choked and knocked down, she managed to get to her bedroom where a gun safe was located. While again being assaulted, she managed to get the safe open, grab a gun and shoot at the intruder. The other intruder fled from the home. After determining that her children were unharmed, the woman noticed that the remaining intruder (now wounded) continued to move in her direction. She told the intruder not to move, and fired a warning shot when the intruder didn't stop. When the intruder still did not stop, the woman shot several more times at the intruder, killing him.

The estate of the intruder sued the woman for wrongful death, and she replied that she had acted in self-defense (she has not been criminally charged in the matter) and claimed that her conduct was covered by various insurance policies that she owned. As such, she claimed that the insurance companies were required to defend her against the wrongful death action. The insurance companies claimed that they had no duty to defend because the insured acted intentionally and that intentional acts of the insured were not covered by the policies. The trial court agreed, and the Iowa Court of Appeals affirmed.

While the woman claimed that one of her policies contained an exception to the exclusion of coverage for intentional bodily injury when reasonable force is exerted in self-defense, the trial court did not rule on the issue. As such, the issue was not preserved for appeal and the Court of Appeals could not rule on it. While both of her policies covered unintended accidents that resulted in bodily injury, they excluded coverage for intentional injuries caused by the insured. So the key question became whether an act of self-defense to save the insured's life, the life of her family members and personal property of the insured was excluded from coverage as an intentional act. On that point, Iowa law is clear - and it is not favorable to insureds. In 1984, the Iowa Supreme Court ruled that an action by the insured in self-defense is an intentional act. However, the court noted the trend in other states is to hold that an insured is not acting with the intent to cause injury when acting in self-defense. Two concurring justices also indicated their

disdain for the current Iowa rule.

Watch this case for further proceedings. It will likely go to the Iowa Supreme Court and force that court to deal with whether the rule on self-defense being an intentional act (for insurance purposes) should be changed. *Amco Insurance Co et al. v. Estate of Wehde, et al.*, No. 5-961/05-0503, 2006 Iowa App. LEXIS 237 (unpublished) (Iowa Ct. App. Mar. 15, 2006).

### **Homeowners Policy Doesn't Cover N.Y. Self-Defense Killing**

By NICK SULLIVAN, Andrews Publications Correspondent

A man who killed an intruder in self-defense is not entitled to homeowners insurance coverage in a consequent wrongful-death action, a divided New York appellate court has ruled in a case of first impression.

The split by the Appellate Division's 3d Department was the latest in a debate that has divided courts across the country: whether a homeowners insurance policy provides coverage when an insured is sued for wrongful death stemming from a killing in self-defense.

Addressing the issue for the first time in New York, the appellate court majority strictly construed the insurance policy language in holding that an occurrence of justifiable homicide results from an intentional rather than accidental act.

An intentional act is not a "covered occurrence" leading to indemnification under the policy, the majority said in a written decision. Accidents, however, are covered.

In the incident giving rise to the suit, a money dispute between the insured, Alfred Cook, and Richard Barber turned deadly when Barber barged into Cook's home. Cook shot Barber at close range with a 12-gauge shotgun, according to the decision.

After an Albany County Supreme Court criminal court jury acquitted Cook, the Barber estate sued for wrongful death. Automobile Insurance Co. of Hartford, which provided Cook's homeowners insurance, sought a declaration that it had no duty to defend or indemnify, the decision says.

The trial court denied the declaration and the insurer appealed.

The Appellate Division reversed, finding that although Cook did not intend to kill Barber when he confronted him, he did intend bodily injury. Therefore, the majority said, the shooting was not a covered occurrence.

Judge Anthony V. Cardona dissented.

"I do not believe that the plaintiff has established, as matter of law, that the events in question are not a covered 'occurrence' within the meaning of the policy," the judge said in a separate written opinion.

<hr>

Automobile Insurance Co. of Hartford v. Cook et al., No. 97160, 2005 WL 2233241 (N.Y. App. Div., 3d Dep't Sept. 15, 2005).

*Insurance Coverage Litigation Reporter*

*Volume 15, Issue 52*

10/11/2005

<center>Copyright 2005

FindLaw, a Thomson Reuters business. All Rights Reserved.</center>

Every insurance policy I've read excludes intentional acts. Most also make exceptions to the

exclusions for injury caused while defending yourself, others and sometimes even your property.

It's easy for most anyone (if you can read) to agree what an insurance policy says. It can be black and white. **BUT the court will ultimately tell you what it really says.**

Nationally, firearms are only used in 8% violent crimes. I would like to see my tax dollars to go for a bigger impact.

The National Crime Victimization Survey (NCVS) measures the nonfatal violent crimes of rape/sexual assault, robbery, and aggravated and simple assault. Victims who experience violent crimes are asked if the offender(s) used weapons.

In 2009 —

- An offender was armed with a gun, knife, or other object used as a weapon in an estimated 22% of all incidents of violent crime.
- Offenders used firearms to commit 8% of violent crime incidents in 2009.
- Robberies (47%) were the most likely crime to involve an armed offender.
- Firearms (28%) were the most common weapons used in robberies.
- Most rapes and assaults did not involve the use of a weapon.
- From 1993-1997, of serious nonfatal violent victimizations, 28% were committed with a firearm, 4% were committed with a firearm and resulted in injury, and less than 1% resulted in gunshot wounds.

**Presence of weapons in violent incidents, by type, 2009**

Presence of offender's weapon	Violent crime	Rape/sexual assault	Robbery	Simple/aggravated assault
<b>Total</b>	100 %	100 %	100 %	100 %
<b>No weapon</b>	73 %	85 %	48 %	76 %
<b>Weapon</b>	22 %	10 %*	47 %	19 %
<b>Firearm</b>	8	-- *	28	5
<b>Knife</b>	6	8 *	9	5
<b>Other</b>	7	2 *	8	7
<b>Type not ascertained</b>	2	-- *	2 *	1
<b>Don't know</b>	6 %	5 %*	6 %*	6 %

Note: Percentage may not total to 100% because of rounding.

If the offender was armed with more than one weapon, the crime is classified based on the most serious weapon present.

\*Based up 10 or fewer sample cases.

--Less than 0.5%.

From Bureau of Justice statistics <http://bjs.gov/index.cfm?ty=tp&tid=43>

Among juveniles (minors under the age of 16, 17, or 18, depending on legal jurisdiction) serving in correctional facilities, 86% had owned a gun, with 66% acquiring their first gun by age 14.<sup>[2]</sup> There was also a tendency for juvenile offenders to have owned several firearms, with 65% owning three or more.<sup>[2]</sup> **Juveniles most often acquired guns illegally** from family, friends, drug dealers, and street contacts.<sup>[2]</sup> Inner-city youths cited "self-protection from enemies" as the top reason for carrying a gun.<sup>[2]</sup> In Rochester, New York, 22% of young males have carried a firearm illegally, most for only a short time.<sup>[108]</sup> There is little overlap between legal gun ownership and illegal gun carrying among youths.<sup>[108]</sup>

[http://en.wikipedia.org/wiki/Gun\\_violence\\_in\\_the\\_United\\_States](http://en.wikipedia.org/wiki/Gun_violence_in_the_United_States)

## **The School Shooter: A Threat Assessment Perspective**

"... we must do everything we can to prevent crime in the first place... We have shown that if communities, schools, government and other key players pull together to address the roots of violence, we can make America safer for our children."

- Janet Reno

<http://www.fbi.gov/stats-services/publications/school-shooter>

## **Project Safe Neighborhood - U.S Department of Justice, initiated 2001**

"PSN is not a "one size fits all" program that is applied uniformly in all jurisdictions; rather, each local SN task force designs its program by tailoring the five core elements of PSN to tackle its own unique gun crime problems" [www.psn.gov](http://www.psn.gov) We currently have this in Connecticut, but it needs more attention and tweaking.

Brooke Cheney  
144 Mansfield Rd  
Harwinton CT 06791  
860-866-8355

[www.savethousandnotjustone.info](http://www.savethousandnotjustone.info)