

Gun-Maker Beretta battles suit by parents of slain boy

By Sean Somerville
The Baltimore Sun

A bit more than four years ago, Michael Soe, 14, replaced the loaded magazine in his father's Beretta 92 Compact L handgun with an empty one and pointed the gun at his friend, Kenzo Dix, 15.

As Kenzo fired a pellet gun at birds out of Michael's bedroom window in Berkeley, Calif., Michael pulled the trigger, expecting to hear a click. Instead, he heard an explosion that would reverberate more than 3,000 miles to Beretta USA's headquarters in Accokeek, Md.

Kenzo Dix died, the victim of an undetected bullet in the gun's firing chamber. Friday, a month after what would have been Kenzo's 20th birthday, an Oakland, Calif., court will begin deciding, in what could be a landmark case, whether Beretta bears any responsibility for the death.

In their suit against Beretta, Kenzo's parents, Lynn and Griffin Dix, maintain that the gun should have been designed to prevent use by unintended users such as children. Lynn Dix said the suit is an attempt to make something good come out of their tragedy.

"When something like this happens, the bullet doesn't stop," said Kenzo's mother. "It just keeps going."

Beretta USA, the U.S. subsidiary of the Italian company, says the fault lies with the Soe family, not the gun, which has a device that warns users of a bullet in the chamber.

"There's no gun that can't be locked," said Jeff Reh, general counsel for Beretta USA.

Reh said Michael Soe's father had left the gun unlocked and loaded, and that Michael knew he should not

point the gun, disengage its safety or touch the trigger.

"He knew how to pull back on the slide of the pistol and check to make sure that the chamber was unloaded," Reh said. "He knew all these things and did not do them. His carelessness and that of his father led to the death of Kenzo Dix, not the design of the pistol."

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Shooting victim's mother

Dix vs. Beretta could help shape the way guns are designed and secured. The case, which Beretta unsuccessfully tried twice to get dismissed, may mark the first jury trial to test gun manufacturers' accountability for failing to "child-proof" guns, said Dennis Henigan, legal director of the Center to Prevent Handgun Violence in Washington, D.C.

The trial comes as some states are moving toward requiring handguns to be child-proofed or "personalized" so that they can be fired only by the intended user. Such legislation has been introduced in New York, New Jersey and Pennsylvania. Just last week, Maryland Gov. Parris N. Glendening became the first governor in the nation to endorse legislation that would ban the sale of all but so-called "smart" weapons.

"This is an important case," said David Kairys, a Temple University law professor who has served as an adviser to officials in Philadelphia, which is considering its own lawsuit against gun manufacturers.

"It's hard to figure exactly which

case or what issue is going to move things ahead," Kairys said. "But there's no doubt that courts, legislatures and the population generally is moving toward understanding responsibility of gun manufacturers as being a lot like that of tobacco or asbestos manufacturers."

At the time Kenzo Dix was killed, the Center to Prevent Handgun Violence was searching for a case to test the notion that gun makers have a responsibility to design guns to protect against unintended use.

Previous "product liability" lawsuits against the industry, which mainly cited the use of handguns in crimes as evidence of their defectiveness, mostly failed, Henigan said.

Now the idea was to equate the responsibilities of gun manufacturers to those of car makers. The reasoning: Just as automakers had to install air bags and seat belts to make cars safer, gun makers would have to use locks, magnets, computer chips or other technology to make firearms safer.

The center said a person dies every day on average because someone fails to recognize that a bullet is present in a gun's chamber. "We just saw enormous potential to save lives," Henigan said.

At the same time, the Dixes were trying to make sure that their son's life had a purpose. "I was thinking that it can't end here," said Lynn Dix.

She contacted Henigan's organization to volunteer her efforts. Henigan liked her case. California's "product liability" standard, which calls for courts to weigh the risks of a product's design against its benefits, was favorable.

In their April 1995 lawsuit filed in Superior Court in Alameda County, the Dixes argued that Beretta's warning device -- an "extractor" on the

handgun barrel that raises slightly at one end if a bullet is in the chamber -- is too subtle for children.

"Beretta could easily have designed its handgun so that this 'chamber-loaded indicator' did warn unintended users like Michael Soe of a round in the chamber," Henigan said. "For example, Beretta could have inscribed a warning on the side of the gun."

Beretta, the suit said, was negligent in "failing to design the gun so that it could not be fired by a foreseeable, unauthorized user like Michael Soe."

The suit also named the youth's parents as defendants for allowing him access to the gun. The parents settled those claims for \$100,000, and Michael Soe was convicted of involuntary manslaughter.

The Dix family, which is seeking unspecified punitive and compensatory damages, has received no settlement offers, and no talks are planned, Henigan said.

Beretta said it did not have a duty to make its semiautomatic pistol safe for unintended adolescent users. The company argued in court documents that the gun is "flawlessly constructed, legally sold only to adults and comes with the warning: 'Store firearms and ammunition separately, beyond the reach of children.'"

"It defies public policy, logic and common sense to hold a distributor of handguns liable for damages that result when an adult imprudently provides an adolescent unsupervised access to a loaded firearm and the adolescent thereafter uses the firearm in the commission of a felony," the company said in court records.

A judge denied Beretta's motion for dismissal in May -- a decision upheld by an appeals court in August -- clearing the way for trial.

Poll shows Americans believe in value of ethnic diversity

By Sam Fulwood III and Kenneth R. Weiss
Los Angeles Times

WASHINGTON -- Americans believe strongly in the value of ethnic diversity in the United States, but feel the nation is becoming more divided along racial lines than less, a new study released Tuesday shows.

The study conducted by the DYG Inc., a New York polling firm, for the Ford Foundation avoids any mention of affirmative action, a hot-button term that tends to draw strong negative reactions. Instead, researchers asked voters to disclose their feelings concerning the broader and less sensitive topic of diversity on college campuses.

Seventy-one percent of respondents say, for example, that college students should learn more about other ethnic groups as a way of bringing the nation closer together. However, three in five questioned say they believe that the nation is growing apart rather than together.

Among selected poll findings: -91 percent agreed that "our society is multicultural and the more we know about each other, the better we get along."

-75 percent said a diverse student body on campus has a positive effect on the education of students, compared to 18 percent who said it has a negative effect.

-69 percent said courses and campus activities that emphasize diversity and diverse perspectives have more of a positive effect on the education of students, compared to 22 percent who said it has more of a negative effect.

"Despite the heated public debate over diversity, Americans are clear in their views," said Alison R. Bernstein, a vice president of the foundation, whose Campus Diversity Initiative sponsored the poll. "They support diversity in higher

education. They recognize that diversity is important to student success and they believe that diversity education can help bring the country together."

Daniel Yankelovich, chairman of DYG Inc., said the study took pains to avoid using the emotion-laden term of affirmative action because it would have skewed the findings. "Affirmative action is the code word for a set of practices that are seen as zero-sum, where somebody wins and somebody loses," he said. "Diversity isn't seen that way. Diversity is seen as everyone wins, as advancing the goals that everyone embraces."

University of Michigan President Lee C. Bollinger said it would be wrong to assume that a majority of Americans favor anti-affirmative action programs like Proposition 209 -- approved by California voters in 1996 -- that outlawed all state support for programs based on race.

"Many people thought a poll like this would come out very differently," he said. "This is great news because it's counter intuitive. We may have misled ourselves about what people really think."

William H. Gray III, president and chief executive of The College Fund/United Negro College Fund, agreed that "Americans may be way ahead of the political leaders, social leaders and economic leaders in understanding this change."

In the poll, 52 percent of voters said that multicultural courses such as women's studies or African-American studies raise academic standards on campus, while only 16 percent believe it lowered such standards. Twenty-one percent thought it did neither.

But the results also showed that 59 percent of those interviewed agreed with the statement: "Diversity education always seems to have a liberal political agenda."

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