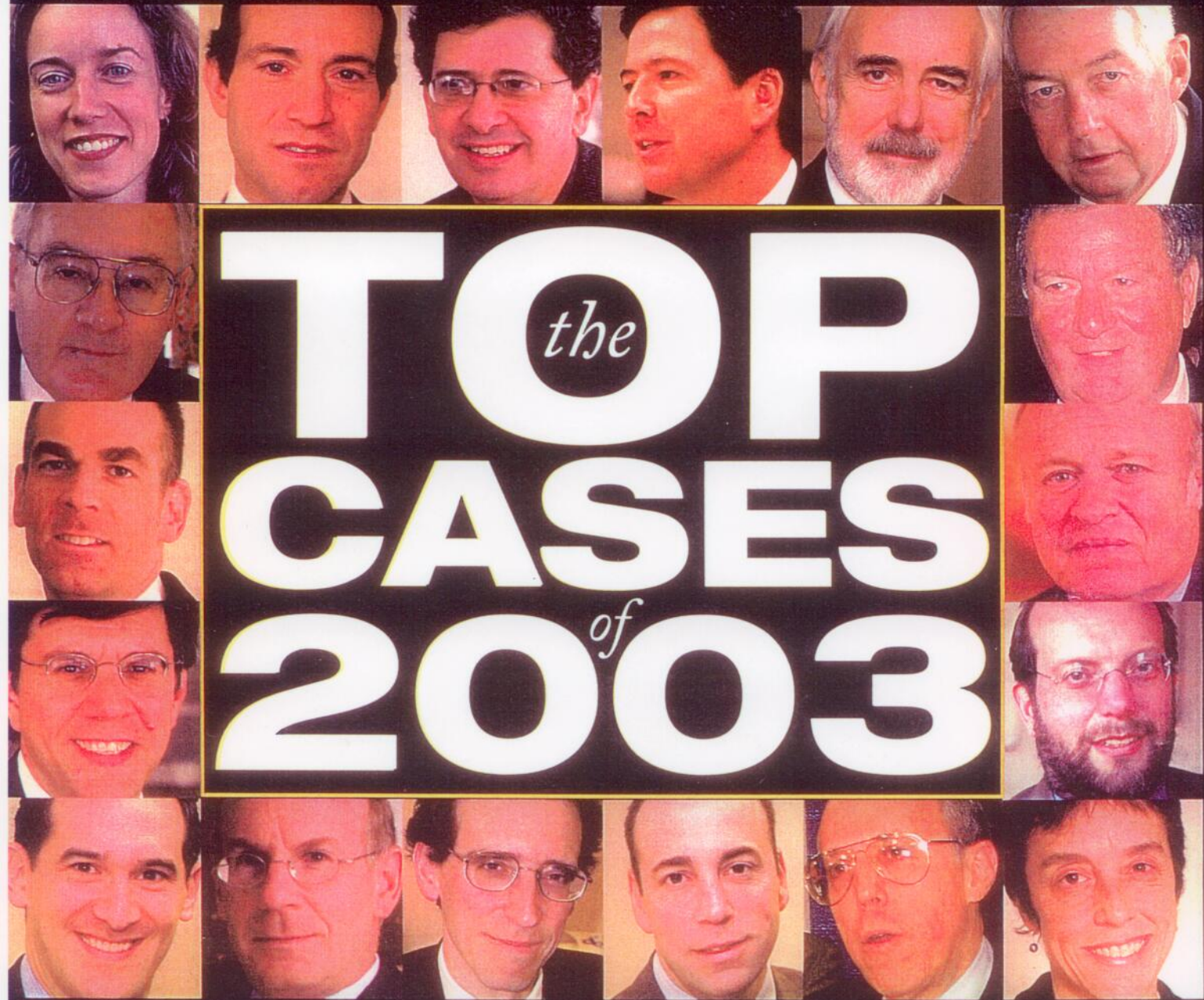


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CLE Calendar



TOP *the* CASES *of* 2003

A review of the major legal battles and dramas
playing out in New York courts.

PLUS:

- Rebounding From a Big Courtroom Loss
- Debating the Wisdom of the Feeney Amendment

LEGAL THEORIES

Gun Litigation

Gun safety advocates lost two important court cases in New York in 2003.

The Appellate Division, First Department, split 3-1, in rejecting Attorney General Eliot Spitzer's effort to impose reforms on the gun industry through the use of a public nuisance theory. The panel rejected the notion that reforms could be imposed on a finding that the gun industry's marketing techniques have resulted in large numbers of guns ending up in the hands of criminals (*People v. Sturm, Ruger & Co.*, 761 NYS2d 192). The Court of Appeals declined to hear an appeal.

Likewise, in the Eastern District of New York, Judge Jack B. Weinstein, in part relying on an advisory verdict of a jury returned after a six-week trial, rejected a public nuisance claim brought by National Association for the Advancement of Colored People.

For gun control advocates, though, there was a potential silver lining in Judge Weinstein's decision in *NAACP v. A.A. Arms*, 271 F.Supp. 435. Despite ruling against the NAACP, the judge found the evidence at trial had proven a public nuisance in the industry's marketing and distribution of guns. He rejected the suit only because the NAACP failed to demonstrate enough tangible harm to itself and its members to permit the group to wage the legal battle.

A similar suit, being brought by New York City, is pending before Judge Weinstein and could go to trial as early as the spring. Judge Weinstein has refused to apply his finding to the New York City suit as a matter of collateral estoppel. Nonetheless, important questions remain as to the spillover impact of issues that surfaced in the NAACP case.

There is a question of New York City's ability to use government data tracing the chain of custody for firearms recovered at crime scenes back to their manufacturer. Congress passed a law barring the release of trace data maintained by the U.S. Bureau of Alcohol, Tobacco & Firearms after the agency, in anticipation of a ruling from Judge Weinstein, released to the NAACP 11 years of data involving 400,000 traces.

Both the NAACP and the gun industry hired experts who prepared reports based on the data. An open question remains as to whether New

York City can use that evidence should federal law block access to ATF's raw data.

THE LAWYERS

The disappointing verdict in the NAACP suit was the culmination of an eight-year legal battle for its lead counsel, Elisa A. Barnes, who worked for the most part without compensation.

The battle started in 1995, when Ms. Barnes filed a damages action against the gun industry on behalf of seven victims of gun violence. Unable to identify the specific makers of the guns that injured or killed her clients, she brought that case on a market share theory. The jury, in a case also presided over by Judge Weinstein, returned a \$4.1 million verdict, but the verdict was subsequently overturned after New York

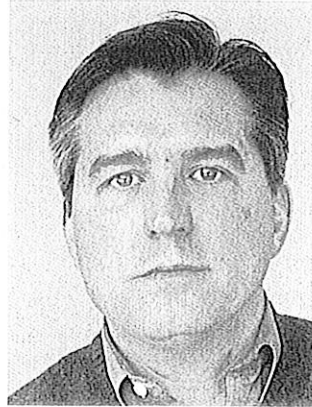


Elisa Barnes

Court of Appeals, ruling on a question certified by the Second Circuit, rejected the market-share approach.

Because the 1995 lawsuit was brought on a contingency basis, Ms. Barnes received no compensation for her work in the case which ended in 2001 with the Court of Appeals' ruling in *Hamilton v. Beretta U.S.A.*, 96 NY2d 222. In the meantime Ms. Barnes had filed the NAACP lawsuit in 1999 which sought only injunctive relief imposing reforms on the industry. While the NAACP was able to raise some funding to defray legal expenses, Ms. Barnes estimates that she and other lawyers donated at least \$450,000 worth of legal time.

Ms. Barnes, 50, graduated from Rutgers University Law School. After nearly five years as an associate at Willkie Farr & Gallagher and Gair, Gair, Conason, Steigman & MacKauf, she established her own personal injury firm



John Renzulli

in 1988. Over the years she has developed a specialty in personal injury cases involving women's health issues. Through her involvement in the litigation over DES, a drug many women took to prevent miscarriages in the 1950s, she became well versed in the market share theory of liability.

In the NAACP case, Ms. Barnes sued 68 manufacturers and distributors of guns. Four lawyers carried much of the load for the defense at the trial. One of the four, John F. Renzulli, of Renzulli, Piscotti & Renzulli, based in New York, represented 17 manufacturers sued in the case, including Glock Inc., one of the nation's largest.

Mr. Renzulli, 47, founded his 11-lawyer firm in 1996. A graduate of New York Law School, Mr. Renzulli spent 12 years, first as an associate and then as a partner, handling defense personal injury work at Wilson Elser Moskowitz Edelman & Dicker.

Renzulli Piscotti handles exclusively defense work, much of it in the products liability field. In addition to being national counsel to Glock, the firm represents between 40 and 50 arms manufacturers, distributors and retailers.

The other major participants in the



Lawrence Greenwald

trial for the gun industry were:

•Thomas E. Fennell, of the Dallas office of Jones Day, represented Colt's Manufacturing Co.

•James P. Dorr, of Wildman, Harrold, Allen & Dixon in Chicago, represented the nation's biggest gun manufacturer, Sturm, Ruger & Co.

•David R. Gross of Saiber Schlesinger Satz & Goldstein in Newark, N.J., represented all the gun distribution companies sued in the case.

In the First Department nuisance claim, Attorney General Spitzer argued the appeal in 2002. It was his first courtroom argument since taking office in 1998.

Lawrence S. Greenwald of Gordon, Feinblatt, Rothman, Hoffberger & Hollander in Baltimore, Md., represented the gun industry on appeal. Mr. Greenwald has represented Beretta U.S.A. Corp. in gun suits across the country. He is a former trial attorney for the U.S. Department of Justice. He graduated Harvard Law School in 1964.

—By Daniel Wise and Tom Perrotta