



Making sense of the senseless

Sandy Hook shares a tragic history with the San Francisco legal community

BY ANTHONY LABEL

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*Mama, put my guns in the ground
I can't shoot them anymore.
That long black cloud is comin' down
I feel like I'm knockin' on heaven's door.*

— Bob Dylan

Knockin' on Heaven's Door

The ruler of the most powerful nation in the free world stands at a podium. Wiping tears from his eyes, he describes how he reacted to the news not as President, but as a parent. He was not alone. The horrific December day in Newtown has inflicted an unimaginable trauma on us all. Unbearable. Horrific.

We lawyers, and particularly those who represent the physically and emotionally damaged, might think we are better able to tolerate the misery of others. We have to. We have to steel ourselves to perform our jobs and help our clients put their lives back together. We have to be strong when our clients are vulnerable. To be effective, we cannot succumb to the numbing despair of tragic loss. But this feels beyond our capacity to function, to push down those feelings, to overcome, to make sense of the madness, to feel we can protect our children, our clients, ourselves. Events like this have happened before, and they have happened here. Some reading this article may remember the news, and may have known the victims. Many of us who choose this profession do so because we want to help. We want to help others, to give power to the powerless. An event like this makes us feel like we must do something. Maybe we can.

July 1, 1993

Nineteen and a half years ago, at the 101 California Street offices of Pettit &

Martin, a then-prominent and well-respected law firm, business was as usual. A deposition in a conference room with opposing counsel from Bronson, Bronson & McKinnon. A young associate having lunch in his office with his wife. Support staff managing phones and files. It was a hot summer day, unusual for the city.

No one had a clue that the worst mass shooting in San Francisco's history was imminent. A gunman, a "failed entrepreneur" who had done business with the firm more than ten years earlier, and who will remain unnamed in this article, had snapped. Writing a largely incoherent manifesto, claiming he had been raped by lawyers, armed himself with assault weapons and rode the elevator to the 34th floor. He exited the elevator and started shooting. He had two "TEC-9's", 9mm semi-automatic weapons made by Navegar, a Chinese copycat of a Colt 45, a .45 caliber pistol, and hundreds of rounds of ammunition. Roaming the floor, firing methodically, he chose his victims by who was within range. He made his way to an internal staircase, down to the next floor, and kept shooting. The bullets rained out of the guns, aided by Hellfire trigger modifications that turned his semi-automatics into fully automatic machines. He killed eight and injured six before turning one of his weapons on himself as officers moved in. The assault was completed in less than 15 minutes.

San Francisco's legal community was in shock. It had lost well-known and good people. Allen Berk, 52, a respected labor law partner at Pettit & Martin. Jack Berman, 36, a partner with Bronson, Bronson, & McKinnon who was at the firm defending his client's deposition. Berman had recently served as president of the American Jewish Congress and chaired his firm's pro bono committee. Deborah Fogel, a 33 year-old legal secretary.

Jody Sposato, a 30 year-old client of Berman's whose deposition was fatefully scheduled at the Pettit offices that day. Sposato was a young mother of a young infant, just months old. David Sutcliffe, a 30 year-old summer associate. And John Scully, a 28 year-old associate who was having lunch with his wife when the chaos broke out. The couple was married about a year prior. John put his wife under a desk to protect her. He saved her life, and died shielding her from the bullets.

The attack proved too much for the 140-attorney powerhouse firm to withstand. The firm provided counseling, support and therapy to its attorneys and staff, but the damage was too great. Two years after the shootings, the firm dissolved. The firm's managing partner told the San Francisco Chronicle at the time "the tragedy definitely had something to do with it, but it didn't cause the firm's economic problems. Getting over those problems takes energy and commitment by people. The shootings really slowed people down at a critical period."

Legal community responds

A few months after the shooting, lawyers formed the Legal Community Against Violence, which eventually became the Law Center to Prevent Gun Violence (www.smartgunlaws.org). The lawyers were led by then-Pettit & Martin partners Chuck Ehrlich and John Heisse. In the early days, the new group shared staff, space and costs with the Handgun Control group.

Lawyers from San Francisco and across the country came out in strong support following this tragedy. The non-profit became essentially an influential think tank and action group for research on gun control laws, and assistance to countless cities and counties in drafting responsible gun regulations. According



to its Web site, the Law Center now maintains the most comprehensive information on U.S. firearms regulation anywhere, including in-depth summaries of federal and state firearms laws and policies nationwide. The Law Center tracks information on critical topics like background checks, assault weapons and machine guns, who can carry guns and where they can be carried, domestic violence restrictions, and mental health reporting. It grades every state in the union, with states achieving higher grades for having laws that require background checks, prohibit the sale of assault weapons and large capacity ammunition magazines, and require law enforcement to evaluate alleged need before issuing a concealed carry permit.

The Law Center also compiles studies of the relationship between the strength of gun laws and death rates. Not surprisingly, the states with the highest gun death rates also have some of the worst gun laws in the country. Irresponsible gun laws include “Shoot First” laws, which gained national attention after the death of Trayvon Martin because they can prevent law enforcement from prosecuting shooters in public places; “Firearms Freedom Act” laws, which declare that federal gun laws do not apply to firearms manufactured and sold within a state’s borders; and laws that prevent doctors from informing their patients about the health risks associated with firearm ownership. Studies show that of the 10 states with the strongest gun laws and the 10 states with the lowest gun death rates, seven states appear on both lists.

1994 Federal Assault Weapons Ban

The 101 California Street shooting, as it came to be known, was a watershed moment in the gun control movement. Led by Senator Diane Feinstein, D-California, and spurred by testimony from 101 California victims as well as victims of the Long Island Railroad shooting, Congress passed the Federal Assault Weapons

Ban in 1994. Bill Clinton signed it into law the same day it was passed. Feinstein’s ban prohibited the manufacturing of 18 models of military style weapons, AK’s, Uzi’s, submachine guns, TEC-9’s, along with the manufacture of high-capacity magazines that could carry more than 10 rounds. But the gains were not permanent. The ban had a 2004 sunset clause that allowed it to expire.

Several attempts were made to renew the ban, but the pro-gun lobby has prevailed. The national debate has taken on a new urgency since Sandy Hook. At the time of this writing, Senator Feinstein, President Obama, and others have called to renew another assault weapons ban. President Obama had stated a desire to renew a similar ban in the 2012 debates.

Lawsuit against gun manufacturers: Battle lost, was the war won?

After the 101 California Street shooting, Dennis Henigan, legal director of the Brady Center to Prevent Gun Violence, represented eight victims and their survivors in a lawsuit against Navegar, the manufacturer of the TEC-9 used in the assault. This was the first time a gun manufacturer was alleged to be responsible for shooting deaths on a straight negligence theory. Henigan also stated that this was the first lawsuit to focus on the problem of assault weapons. The negligence theory was necessary because at the time, gun manufacturers enjoyed immunity from liability in a law passed in 1983, which provided that “[i]n a product liability action, no firearm or ammunition shall be deemed defective in design on the basis that the benefits of the product do not outweigh the risk of injury posed by its potential to cause serious injury, damage, or death when discharged.”

In 2001, the California Supreme Court in *Merrill v. Navegar* (2001) 26 Cal.4th 465, held that 101 California Street victims’ lawsuit was a product liability lawsuit, and the gun industry was immune. The response and outcry to the Court’s ruling helped legislation to repeal

the immunity statute in a 2001 bill introduced by Dennis Perata. In 2002, California became the first state to repeal an immunity statute. As Henigan told the California Bar Journal in 2004, on the 10-year anniversary of the shootings, “Even though our clients lost the battle . . . we feel they actually won the war and paved the way for other victims of gun violence to vindicate their rights.” Navegar shuttered its doors in 2001.

Gun industry response

The gun industry and its lobbyists, in familiar fashion, described the 101 California Street shootings as another instance of a criminal misusing a firearm. The refrain heard now, an example of which was recently provided by Ted Nugent, one of the intellectual leaders of the pro-gun movement, is “Only fools blame tools instead of human failings.” Additional blame is placed on violent video games, parental failings, and glorification of mass shootings. Those supporting the NRA and pro-gun rights also counter that military style weapons and concealed carry permits are necessary to protect themselves from criminals who might use such weapons against them some day.

The sad state of gun safety regulations

The gains made after 101 California Street have stalled, and in many places gone backward. Nicholas Kristof, writing an opinion piece in the New York Times the Sunday after Sandy Hook, shames us all by articulating the disparity in the amount of safety regulations on things our schoolchildren encounter compared to firearms. Stairways must meet multiple building code regulations. School buses have strict safety standards. The FDA regulates cafeteria food. There are five pages of OSHA regulations devoted only to ladders. Even toy guns are required to have orange tips. He poignantly contrasts the courage of the Sandy Hook teachers, starting down the barrel of a madman’s guns to protect their children, with feckless



politicians who lack the spine to stare down the bullying NRA and its lobbyists.

Sandy Hook and a personal story

This is an article written by a trial lawyer for other trial lawyers. It was supposed to be a column about trial practice. But following the events at Sandy Hook, I found myself unable to muster the energy to write about my job. Like our president, I found myself reacting as a parent, not as a disinterested citizen who would hear the news and continue on with the day-to-day demands of life, family and work. We know from our clients how an unexpected tragedy can impact a family. It is described as a ripple effect, like a pebble tossed into a calm lake, and the waves that ripple and impact others in countless ways. Death from an act of violence is more like a meteor than a pebble. The waves, more like a storm, surge rather than ripple. When I was in middle school, my uncle was killed, execution style, by gunmen in a San Francisco restaurant he owned and operated. I saw how the impact of a senseless act of violence travels in waves that overwhelm not just the

immediate family, but beyond into the extended family and community of friends. The effect travels vertically as well, impacting later generations, the children of those who were damaged by the trauma. When I multiply that effect – dozens of families in Connecticut who are getting hit now with the first of many waves; lives forever changed, extended families, communities; multiplied again by the age of the children who were lost – the sorrow is infinite, dark and cold and endless.

It feels overwhelming. I think of my own three children, one of them a six-year old, the same age as most of the Sandy Hook victims. Driving her to school after the shooting, I held her hand as she sat behind me in her car seat. Correction, her child safety seat, the one that I fret over, checking and rechecking to make sure it's secured, safe, functioning properly. But there's only so much we can control. As parents we are supposed to protect our children. How can we stop something like this? I don't have the answers. But the lesson from the 101 California Street incident gives me hope. We are fortunate to live and work in a community that can and will take

action. We have the ability to effect change. We work every day to make the world a safer, better place. We often succeed. We have each other's backs. That doesn't take away the fear, but it reduces the feeling of overwhelm. It takes away the hopelessness. As we ring in the new year, I am grateful for all of you.



Label

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William Veen founded The Veen Firm, P.C. as a sole practitioner in 1975, gradually developing it into a firm of talented attorneys and staff who represent severely injured workers and consumers. He is a member of the American Board of Trial Advocates and honored as the Trial Lawyer of the Year by the San Francisco Trial Lawyers Association in 2003. www.veenfirm.com.