

Decision in handgun trial may make legal history

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the revolver that injured him, and from the gun's Tennessee-based designer and maker.

Regardless of how the Clancy jury rules, Turley will press other handgun cases using his self-described "unconventional argument." It's an argument that critics say has no place in the courtroom because there is no legal precedent for it and it attempts to circumvent the role of state legislatures, which repeatedly have refused to ban handguns.

Turley replies that civil lawsuits may be the only means of requiring small handgun makers to accept some responsibility for the nation's 22,000 annual handgun deaths.

Clancy was talking with friends in the parking lot of Amarillo's Alamo Catholic High School in the early afternoon of Oct. 4, 1977. The blond, lanky 10th grader said he did not notice that Kenneth Hacker, a schoolmate he barely knew, was playing with a small revolver in the back seat of a nearby car.

"The next thing I knew, I was looking at the sky," Clancy says.

A bullet from Hacker's gun had pierced Clancy's spinal cord and lodged in his neck, where it remains today. Despite surgery and months of physical therapy, Clancy remains a quadriplegic, paralyzed from the shoulders down.

He has enough use of his left hand to hold a cup and operate his motorized wheelchair. He cannot control his bodily functions. He can't bathe or clothe himself. With help from a full-time attendant, he attends business classes at Amarillo Junior College.

Hacker says he bought the .22-caliber Armsco revolver from a friend for \$10 and had brought it to school to show to friends. He told police he was spinning the revolver's cylinder when the gun accidentally discharged, but has given conflicting reports about whether he also was touching the trigger.

The gun originally was sold in 1971 for \$19 to an Amarillo couple, who said they needed it for self-protection in their junkyard business, where they handled cash. They bought it from a discount store owned by Zale Corp.

The revolver subsequently was stolen and changed hands several times before Hacker bought it when he was 15, say police, who ruled Clancy's shooting an accident.

Zale, the chief defendant in the case, argues that Hacker — not the gun — is

responsible for the shooting. Zale's lawyers, Mathis and John E. Phillips of Dallas, say the employees who first sold the gun had no way of predicting it would land in irresponsible hands.

State District Judge Nathan L. Hecht has forbidden Zale's lawyers from telling the jury that Clancy once collected \$50,000 from a homeowner's insurance policy held by Hacker's parents. Over defense lawyers' objections, the judge ruled that the fact was irrelevant to the case at hand.

Clancy, now 21, says he does not blame Hacker for the accident. But Hacker is listed as a third-party defendant in the case at Zale's insistence.

The U.S. Constitution guarantees the right "to bear arms." Furthermore, Congress and state legislatures repeatedly have rejected proposals to ban small handguns.

In light of that, the National Rifle Association says Turley's attempt to use civil courts to effectively stop the distribution of small handguns is an effort to "twist the law to his own purposes" and circumvent the proper role of elected officials.

"We believe everybody, rich and poor, has a right under the Constitution to own a handgun," says Richard Gardiner, the NRA's assistant general counsel. He says Turley's attack on inexpensive handguns discriminates against the poor.

Gardiner also says Turley's argument wrongly places the blame for handgun misuse on the gun instead of the careless or criminal person using it. He said widespread acceptance of Turley's argument would encourage crime because it would tell the gun-wielding criminal "that he's not going to be held liable — the (gun) manufacturer will be held liable."

If lawyers such as Turley can successfully attack inexpensive handguns, Gardiner said, they will have established the legal and logical foundation for attacking all guns, including rifles. If one accepts Turley's argument about inexpensive handguns, he said, then "you've accepted the argument that blame can be placed on the instrument itself."

Gardiner said the NRA will not support companies that make guns of poor quality. "The company deserves to be sued if it's manufacturing junk that's hurting people," he said. He said that is not the case in Clancy's trial.

"Product liability" lawsuits gained national attention when consumers success-