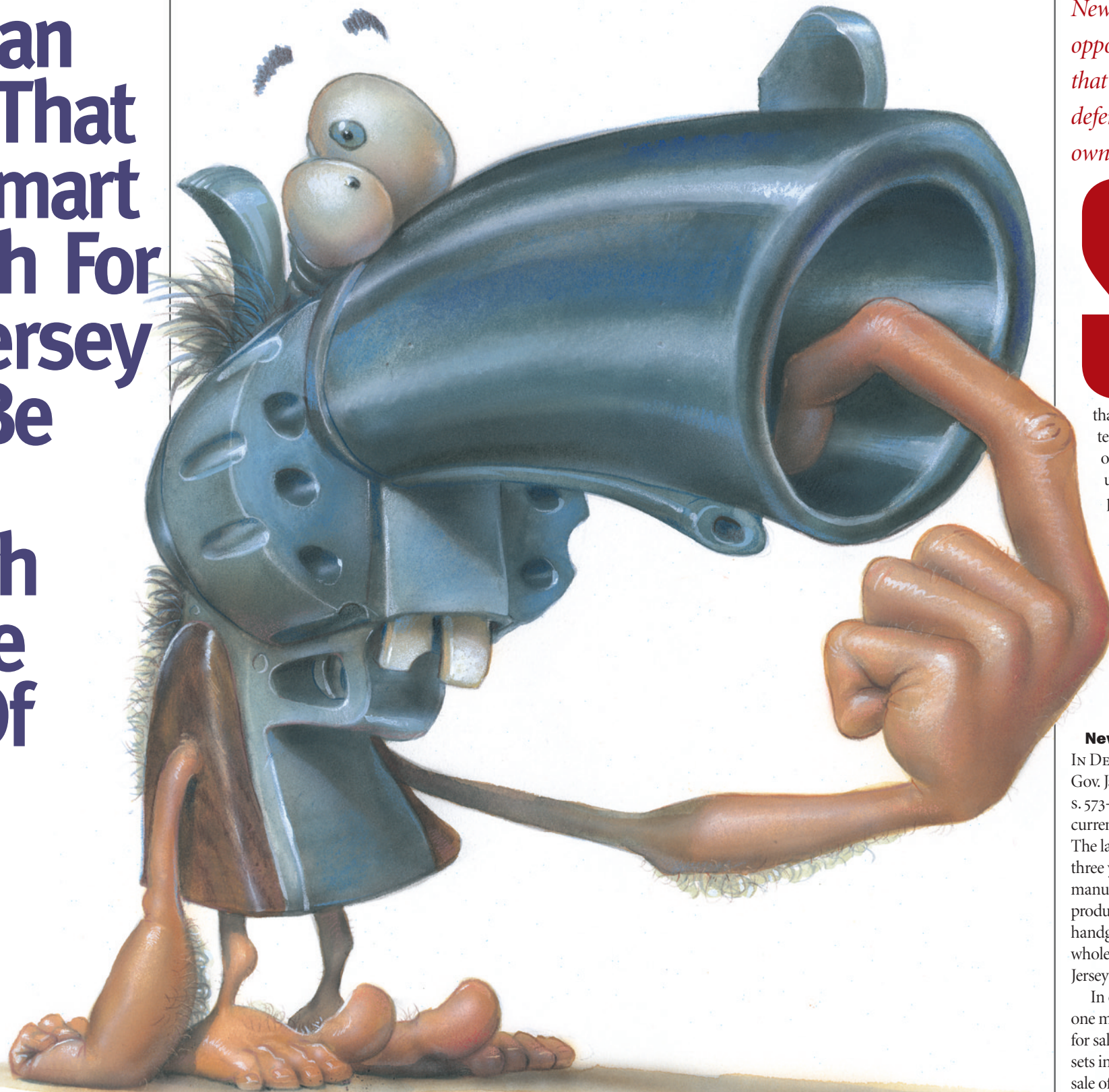


How Can A Gun That Isn't Smart Enough For New Jersey Cops Be Smart Enough For The Rest Of Us?



New Jersey's "smart gun" bill may ultimately do just the opposite of what it claims to do by forcing gun owners in that state to purchase unreliable firearms, unsafe for self-defense. You say you want proof? New Jersey won't ask its own law enforcement officers to use them.

S by DAVE KOPEL

"SMART GUNS" IS A slang term for a hypothetical firearm that incorporates computer technology so that the gun can only be fired by the authorized user. When used by the gun prohibition groups and their political allies, the term is a euphemism for "gun prohibition."

And, as recently enacted by the New Jersey legislature, it is premised on the idea that using a firearm for protection is immoral, unless you are a government employee.

New Jersey Justice?

IN DECEMBER 2002, New Jersey Gov. James McGreevey signed bill s. 573-890, a ban on the retail sale of currently existing models of handguns. The law makes the ban go into effect three years after "at least one manufacturer has delivered at least one production model of a personalized handgun to a registered or licensed wholesale or retail dealer in New Jersey or any other state."

In other words, the availability of one model of "personalized handgun" for sale, anywhere in the United States, sets in motion a ban on the retail sale of any of the thousands of handgun models that are currently

legal. (There are some exceptions for antiques and for guns used by active competitive shooters.)

Banning the sale of every handgun except one or a few models isn't quite as complete a form of prohibition as banning the sale of all handguns. But it's pretty close.

The pretext for this new form of handgun prohibition is, supposedly, "For the children." In truth, fatal gun accidents involving children are at an all-time recorded low. In 1975 there were 500 fatal gun accidents for children 14 and under. In 2000, there were 80 such accidents, according to the National Safety Council. (A quarter of those—20—involved children four and under.) The New Jersey Department of Health reported zero children in New Jersey killed in firearms accidents in 1998 and 1999, the last years for which detailed statistics are available.

Many legislators, however, are misled by claims from gun prohibition groups claiming that, "12 children a day are killed by guns." This factoid is manufactured by counting an 18-year-old gangbanger shot while trying to rob a liquor store as "a child killed by a gun."

The O.E. Mossberg company has trademarked the term "SmartGun," and therefore, the phrase should not be applied to products from other companies. "Personalized gun

technology" is the more appropriate term. Some gun control lobbyists use the terms "safe gun" or "childproof gun," although this language also is inaccurate.

Good Enough For You, But Not The Police

NEW JERSEY GOV. MCGREEVEY called the gun prohibition law "common sense," but rather significantly, McGreevey's "common sense" will be imposed only on the taxpayers of New Jersey, yet not imposed on the taxpayer-paid bodyguards who protect McGreevey himself.

When the personalized gun bill was moving through the New Jersey Assembly, a committee attached an amendment ensuring that the bill's provisions would apply to police as well as the public. This immediately

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halted the bill, since the state and local police absolutely refused to allow themselves to be forced to use unproven technology. They, quite correctly, insisted that they did not want their lives to depend on a gun that is as reliable as their computer; a less than 100 percent rate of proper functioning just isn't good enough when one's life is in danger.

Indeed, the New Jersey ban goes into effect regardless of whether the first personalized handgun functions properly at a 99.998 percent rate, or an 80 percent rate. In October 2001, the

New Jersey Institute of Technology, a university that is using government grants to promote personalized gun technology, admitted that the best fingerprint recognition system currently worked only 80 percent of the time.

After McGreevey applied some extra political muscle, the Law and Public Safety Committee retreated and replaced the requirement that personalized gun laws apply equally to the government with a toothless "study" about whether they should. As enacted and signed by the governor,

A tale of assault and batteries

A quick look at why "smart" gun technology isn't available yet — and may not be soon

Among the ideas discussed for personalization technology are:

Radio Frequency Identification Devices (RFID) equip a gun with an antenna to receive radio waves. The waves are transmitted from a ring, wristband or hand-held transmitter.

The RFID has been promoted by Colt's Manufacturing Company, which has received federal grants for research. Although Colt's announced in November 1998 that an RFID gun would be on the market by 2001, there is no evidence that the gun will be available at any future certain date, and the Colt's Web site no longer promotes the RFID gun.

Like all radio-based devices, RFID guns could be disabled by jamming equipment. If the user forgot to wear the ring or wristband, the gun would be completely useless. And, like all personalized gun technologies, the RFID is also vulnerable to battery failure. The battery problem would likely be more acute for citizen guns, which (unlike police duty guns) are usually not checked for readiness every day.

Bar Code Readers could be inserted in guns, requiring the user to swipe a special magnetic card or other device in order for the gun to be activated. Skeptics note that supermarket bar code readers sometimes require multiple swipes, and sometimes do not work at all. The time required to execute multiple swipes might make a firearm useless in an emergency.

Touch Memory is somewhat similar to the radio frequency device. The gun is activated by a ring or some other item that touches a particular spot on the gun. Besides being vulnerable to battery failure, a Touch Memory device could be impaired by a user's gloves, as well by dirt, blood, sweat or oil on the hand or on the gun.

Biometric Technologies would activate a gun after reading a voice, a fingerprint, a hand shape or some other personal characteristic of the user. The key vulnerabilities are battery failure and slow operation. Additionally, anyone who has tried to use voice recognition on a cell phone —or even on an extremely powerful personal computer—knows that biometrics do not work all the time.



the personalized gun law states: "The provisions of this section shall not apply to handguns to be sold, transferred, assigned and delivered for official use to: (1) State and local law enforcement officers of this State; (2) federal law enforcement officers and any other federal officers and employees required to carry firearms in the performance of their official duties; and (3) members of the Armed Forces of the United States or of the National Guard."

Supposedly, the handgun ban was also meant to reduce teenage suicides. But there is no group of teenagers more likely to have a loaded handgun in their home than the teenage sons and daughters of police officers, who are exempt from the law.

Simply put, personalized guns are too unreliable for the teams of bodyguards protecting McGreevey,

but they're just fine for a single mother trying to protect her children from a violent intruder. The same legislature that won't mandate personalized guns for state troopers decided it was just fine to force these less dependable but more expensive guns on low-income citizens, like the law-abiding people in the slums of Newark who need to protect themselves from gangs.

McGreevey argued, "There are safety regulations on cars, on toys. It's clearly time we have safety regulations on handguns." Yet new regulations for automobile or toy safety don't prohibit the sale of every existing automobile or toy. That's because the people who promote the regulations aren't opposed to ordinary people driving cars or playing with toys.

Against Self-Defense

THE ANTI-GUN LOBBIES are especially

opposed to citizens using firearms for protection. For this reason, the fact that personalized gun mandates make it less likely that people will succeed in using firearms for protection is no problem at all for them.

Brady Campaign's Sarah Brady explains, "To me, the only reason for guns in civilian hands is for sporting purposes." (*Tampa Tribune*, 10/21/93) Likewise, her husband Jim Brady was asked if handgun ownership should be permissible. Mr. Brady replied, "For target shooting, that's okay. Get a license and go to the range. For defense of the home, that's why we have police departments." (*Parade Magazine*, 6/26/94)

Ironically, although the New Jersey law, which doubtless will be proposed and promoted as a model for many other states in 2003, insists that

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“Smart” Guns

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personalized guns should be forced on everyone except the police, the guns were originally conceived as something *only* for police officers.

A significant fraction of police officers who are killed in the line of duty are shot with their own firearms or with firearms taken from a fellow officer. The u.s. Department of Justice’s National Institute of Justice sought a solution by subsidizing research into “smart guns.” Colt’s Manufacturing Company, for example, received millions from the Clinton Department of Justice for its industrial research efforts.

In 1996, the u.s. Defense Department’s Sandia National Laboratories produced a report to the DOJ on “Smart Gun Technologies.”

The Sandia report stated that reliability was officers’ main concern: “The firearm must work because the officer’s or another person’s life is at stake.” Sandia concluded that an acceptable personalized gun must take no longer than a quarter-second to recognize the authorized user—a limit consistent with the fact that the average gunfight lasts only 2.7 seconds. Sandia did not find any currently available technologies that would be acceptable to police.

More recently, the New Jersey Institute of Technology has been claiming that a personalized gun could be expected to be on the market by 2004.

The bill does require that the attorney general determine, “through testing or other reasonable means, that the handgun meets any reliability standards that the manufacturer may require for its commercially available handguns that are not personalized or, if the manufacturer has no such reliability standards, the handgun meets the reliability standards generally used in the industry for commercially available handguns.”

This language might sound good, but one should remember that the determination will be made by the

attorney general of New Jersey, who (unlike in other states) is a political appointee of the governor, and will be enforced by New Jersey’s Supreme Court, which is notoriously hostile to gun owners.

The practical guarantee—as opposed to the political promise—that personalized guns would be just as reliable as standard guns would be a requirement that New Jersey police use them also. But the actual lack of confidence felt by New Jersey politicians about personalized gun reliability is proven by the final clause of the bill: “No action or inaction by a public entity or public employee in implementing the provisions” of the

complicated 19th century mechanical device, the gun, with delicate and sophisticated computer engineering. With the footprint of an existing gun—with controlled explosions, heavy percussions and vibrations, dirty residues and high temperatures—electronics that would have to withstand this high stress would be imbedded. It is like putting a laptop computer into a gun and then having the computer decide when the gun will work, and when it will not.”

Another technical problem for personalized guns is “chip twiggles”—the name that gun manufacturers give to efforts to defeat personalization. For example, if a burglar stole a gun

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bill “shall constitute a representation, warranty or guarantee by any public entity or employee with regard to the safety, use or any other aspect or attribute of a personalized handgun. No action to recover damages shall arise or shall be brought against any public entity or public employee for any action or inaction related to or in connection with the implementation of any aspect” of the bill.

In other words, no matter what McGreevey and his legislative allies told the public, they can’t be held accountable for claiming the personalized guns would work in an emergency. If your husband and children get murdered by a criminal because the government-mandated personalized gun malfunctioned, you can’t sue the government, which forced your husband to use the inferior gun.

Personalized guns, however, have proven much more difficult to build than to imagine. As one gun manufacturer explained, the core design problem is the “meshing of a

that used computer personalization technology, he could destroy the computer chip by simply baking the gun in an oven. Chip twiggles could be employed not only by thieves, but also by legitimate consumers (such as the people of New Jersey) who were concerned that their mandated personalized gun would not be quick and reliable in an emergency.

The greater the efforts that manufacturers make to prevent chip twiggles, the less reliable the guns become for self-defense, and the more unacceptable the gun becomes to police forces. According to Sandia, police insist that a personalized gun be usable in case the personalization technology malfunctions or breaks.

Accordingly, some manufacturers, such as Glock, are not investing in personalized gun technology at all, because they are skeptical that it can ever work reliably enough. Other manufacturers, though, are hoping that by bringing a personalized gun to the market, they will be able to charge

premium prices—especially to affluent males who want to own a gun, but whose wives are afraid that an ordinary gun might cause a home accident.

Presumably, some of these potential buyers would be happier to have a 97 percent reliable gun that their spouse will allow, as opposed to a 100 percent reliable gun that the spouse will not allow in the house. These manufacturers are spurred by polling data suggesting that about a third of the public that does not currently own guns would be interested in purchasing a personalized gun. Manufacturers also look forward to selling a new type of firearm to some of the existing base of gun owners, who might enjoy a gun with a brand-new gadget.

Thus, personalized guns are likely to develop, eventually, a legitimate place in the mix of firearms purchased by the public—especially for firearms intended only for sporting purposes.

But to prematurely force the people of New Jersey to be the early testers for Version 1.0 of personalized guns technology, Gov. McGreevey and the New Jersey legislature have made it much more likely that more law-abiding people will be murdered, raped and assaulted by violent predators, who doubtless will ignore the law and use whatever gun they please. And McGreevey and company have ensured that victims will not be able to sue their government for the injuries caused by their government.

No Need For Gun Safety?

THE DANGEROUS NEW JERSEY mandate might also even cause an increase in gun accidents. Firearms safety instructors train students to treat all guns as if they are loaded and never to rely upon someone else’s assertion that a gun is unloaded. Even after a person checks a gun his or herself and is certain that the gun is unloaded, he or she must still always point the gun in a safe direction. And the rule to

never place a finger on the trigger until the shooter is ready to fire applies just as much to unloaded guns as to loaded ones.

Personalized gun mandates, though, encourage people to violate these safety rules, since the government assures people that they can rely on the gun’s technology instead. For example, if an irresponsible person were not wearing the special gun ring, he might feel free to point a gun at someone for a joke and press the trigger, since the gun would, if functioning properly, not fire without the ring.

Uninformed people who rely on gun personalization technology might also indulge their habits of unsafe gunplay even when they encounter one of the 260 million guns in America (the approximate existing gun supply, as of 2002) that do not have personalization technology. If, as the gun ban bill claims, “New Jersey’s commitment to firearms safety is unrivaled anywhere in the nation,” then the legislature and governor would not be undermining gun safety training and shielding themselves from liability.

The “smart gun” issue is couched in terms of cutting-edge technology, but the debate really involves the oldest issues in the gun control debate: handgun prohibition, defensive gun use, the legitimacy of gun ownership by poor people and the dangerous conceit that anti-gun lobbyists understand gun safety better than do certified firearms safety instructors. ☹

Some material in this article came from Guns in American Society: An Encyclopedia of History, Politics, Culture, and the Law (ABC-Clio), for which Kopel was a co-editor, and the Connecticut Law Review article “Smart Guns/Foolish Legislators,” which Kopel co-authored with Cynthia Leonardatos and Paul Blackman. That article, which includes citations for much of the material discussed here, is available at www.davekopel.org.