PREVENTING GUN VIOLENCE:
THE PROBLEM, SOLUTIONS, AND WHAT THE SECOND AMENDMENT ALLOWS

Cosponsored By:

American Bar Association
Hennepin County Bar Association
Ramsey County Bar Association
Public Health Law Center, Network for Public Health Law
William Mitchell College of Law

June 24, 12:00 p.m. – 2:30 p.m.
Main Auditorium
William Mitchell College of Law
875 Summit Avenue
Saint Paul, MN 55105

Please join us for an in-depth discussion of current Second Amendment law and other developments in the fight to reduce gun violence in our community. This complimentary program will include the latest developments in the legal, legislative and public health fields, with experts from each area available for question and answer sessions.

- **Reception, 10:30 a.m. – 12:00 p.m.**
- **Introduction, 12:00 p.m. - 12:10 p.m.**
  Chris Coleman, Mayor of St. Paul
  James Silkenat, President, American Bar Association (ABA)
- **Public Health Perspectives, 12:10 – 12:50**
  Jon Vernick, John Hopkins Center for Gun Policy & Research
  Dr. Michael McGonigal, Trauma Services at Regions Hospital
- **Legal Perspectives 12:50 – 1:40**
  Second Amendment Law
  Prof. Darrell Miller, Duke University School of Law

Legislative Landscape and Reform through Litigation
Jon Lowy, Brady Center to Prevent Gun Violence
• **Current Enforcement Landscape and the Role of ATF, 1:40-1:55**
  B. Todd Jones, *Director, Bureau of Alcohol, Tobacco, Firearms and Explosives*

• **Minnesota Gun Violence Issues, 1:55-2:15**
  John Choi, *Ramsey County Attorney*
  Mike Freeman, *Hennepin County Attorney*

• **Panel/Question and Answer, 2:15-2:30**
  Moderator: David Clark, *Chair, ABA Standing Committee on Gun Violence*

* Please join us for a reception prior to the program with pizza and refreshments.

**Directions to campus** bring you directly to the main parking lot. You may also park on the street or in the College parking lot at the corner of Summit Avenue and North Grotto Street. Please plan a few additional minutes to walk to the main campus. If the link does not open, please copy and paste the following URL: [http://web.wmitchell.edu/about/directions-to-campus/](http://web.wmitchell.edu/about/directions-to-campus/).

This is a complimentary program. 2.0 CLE hours have been requested for this program in Minnesota, North Dakota, South Dakota, Wisconsin, Iowa, California, New York, and Illinois. Information is available for lawyers who are unable to attend the program due to cost considerations and provide the procedures, criteria, and contact information for scholarship applications.

*Please direct all questions to the following email address. To register for the program, please send your information by email to: [preventinggv@americanbar.org](mailto:preventinggv@americanbar.org).*

For more information, please visit [www.americanbar.org/gunviolence](http://www.americanbar.org/gunviolence).
Introduction

James Silkenat, a partner in the New York office of the national law firm of Sullivan & Worcester and a member of its Corporate Department, is President of the American Bar Association. In his legal practice at Sullivan & Worcester in New York, Silkenat helps coordinate the firm’s international business practice and concentrates on the areas of project and infrastructure finance, banking, securities law, mergers and acquisitions, and corporate law. He is a former Legal Counsel at the International Finance Corporation of the World Bank Group in Washington, D.C. Silkenat received his Bachelor of Arts from Drury College, where he received the Distinguished Alumni Award for Career Achievement in 2000 and an Honorary Doctorate of Humane Letters Degree in 2012. He received his Juris Doctor from the University Of Chicago School Of Law, where he was an Editor of the University of Chicago Law Review, and his Master of Laws in International Law from New York University School of Law.

Chris Coleman took office as Saint Paul’s Mayor in 2005 after several years as a city councilmember, community and neighborhood leader. Immediately, Mayor Coleman set forth initiatives to make Saint Paul the most livable city in America. His priorities include working to close the achievement gap, creating sustainable and responsible budgets, and investing in the infrastructure of Saint Paul. Mayor Coleman has achieved several of his goals, advocating for education and public safety, and being instrumental in championing the Green Line (Central Corridor Light Rail line)—the largest infrastructure project ever undertaken in the state of Minnesota. These efforts and initiatives are all accomplished with sound fiscal management in mind and guided by a passion for the City of Saint Paul. Under Mayor Coleman’s leadership, Saint Paul has become a national leader in green initiatives and sustainable living. Just after taking office in 2006, Mayor Coleman signed the US Mayors Climate Protection Agreement and has hired sustainability, energy, environment, sustainable transportation and water resources coordinators. The city’s sustainable investments include retrofitting buildings for energy efficiency, equipping public places with solar panels and electric vehicle charging stations, and more. Mayor Coleman’s top priority has always remained the safety of all residents and visitors to Saint Paul. Committed to building world-class departments that set the standard for service to residents and community, Mayor Coleman continues to invest in emergency personnel and training, as well as improved technology to assist them in keeping our communities safe.

David W. Clark chairs the ABA’s Standing Committee on Gun Violence, has been involved in gun violence issues since the early 1990’s, is a delegate in the ABA’s House of Delegates, and is a partner at Bradley Arant Boult Cummings LLP in Jackson, MS. His law practice has been in commercial litigation and he has been listed for over 10 years in Best Lawyers. He graduated from Millsaps College, has a master’s degree in Government from Harvard University, and graduated from the University of Michigan Law School.
Public Health Perspectives

Jon S. Vernick, JD, MPH is an Associate Professor and an Associate Chair in the Department of Health Policy and Management at The Johns Hopkins Bloomberg School of Public Health. Prof. Vernick is Co-Director of the Johns Hopkins Center for Gun Policy and Research. In addition, he is Co-Director of the Johns Hopkins Center for Law and the Public’s Health and Deputy Director of the Center for Injury Research and Policy. His work has concentrated on ways in which the law and legal interventions can improve the public's health. He is particularly interested in epidemiology, policy, legal, and ethical issues associated with firearm and motor vehicle injuries. He has also examined aspects of numerous other public health issues including tobacco control, preparedness, and health advocacy. Prof. Vernick is also committed to graduate education, serving as an Associate Chair of the Johns Hopkins MPH Program. Jon Vernick received a B.A. from Johns Hopkins University, his law degree from George Washington University, and an MPH from the Johns Hopkins School of Public Health.

Dr. Michael McGonigal Dr. McGonigal has been interested in trauma since his undergraduate years at Oberlin College in Ohio. He graduated from the Ohio State University College of Medicine in 1982. He pursued residency training in General Surgery with an emphasis in trauma care at the Wayne State University in Detroit, Michigan. After completing his training, Dr. McGonigal was recruited by the University of Pennsylvania to join two other trauma surgeons in creating the PennStar Trauma Center in 1987. This program has grown significantly and is now an internationally recognized leader in trauma care and research. Dr. McGonigal moved to Minnesota in 1993 to become the Director of Trauma Services for the St. Paul Ramsey Medical Center, which subsequently changed its name to Regions Hospital. This program has an excellent reputation across the upper Midwestern United States, and treats 3000 trauma patients annually. He is a member of the American College of Surgeons Committee on Trauma, and inspects and verifies trauma centers across the United States. He has served on the board of directors and on multiple committees in national trauma organizations in the States. He lectures on trauma frequently and is involved in the development of state trauma systems. Dr. McGonigal also has a life outside the hospital. He has been a licensed pilot for 34 years and is a trained chef. He enjoys spending time cooking with his wife and son. He also has a strong interest in technological and internet applications, and is constantly working to integrate them into medical and trauma care.

Legal Perspectives, Second Amendment Law

Professor Darrell Miller focuses his scholarship and teaching on issues of civil rights, constitutional law, civil procedure, and legal history. He joined the Duke Law faculty as a professor of law in 2013 after visiting in the spring 2012 semester. He previously was a professor of law at the University of Cincinnati College of Law. Miller entered the legal academy after five years litigating complex and appellate matters with Vorys, Sater, Seymour and Pease LLP in Columbus, Ohio. Prior to that, he clerked for Judge R. Guy Cole, Jr. of the United States Court of Appeals for the Sixth Circuit. Miller is a cum laude graduate of Harvard...
Law School where he served as notes editor for the *Harvard Law Review*. In addition to his J.D., Miller holds degrees from Oxford University, where he studied as a British Marshall Scholar, and from Anderson University, where he was honored with the Distinguished Young Alumni Award in 2004. Miller was honored by University of Cincinnati law students in 2009 and 2010 with the College of Law’s Goldman Teaching Excellence Award. In 2011, he received the College of Law’s Harold C. Schott Scholarship Award recognizing outstanding research and scholarly achievement; his Schott Scholarship Award Lecture was titled “The Second Amendment in Theory and Practice,” which touches on one broad focus of his scholarly agenda.

**Legislative Landscape and Reform through Litigation**

**Jonathan E. Lowy** is the Director of the Legal Action Project at the Brady Center to Prevent Gun Violence. For over 16 years he has helped reform dangerous gun industry practices through lawsuits on behalf of victims of gun violence, helped defend reasonable gun laws, and challenged gun lobby-backed laws that place Americans at risk. He has helped establish precedent in courts across the country holding irresponsible gun companies accountable for contributing to gun violence by negligently selling or designing guns; establishing that the Second Amendment allows for reasonable gun laws; and striking down gun lobby laws that restrict Americans’ rights and their ability to prevent gun violence. Mr. Lowy discusses firearms issues extensively in the media. He graduated from Harvard College and the University Of Virginia School Of Law.

**Current Enforcement Landscape and the Role of ATF**

**B. Todd Jones** was sworn in as the Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) on Aug. 29, 2013. He became the first ATF Director to receive Senate confirmation on July 31, 2013. The ATF Director is responsible for the unique law enforcement agency within the U.S. Department of Justice with the responsibility for enforcing firearms and explosives laws that protect communities from violent criminals and criminal organizations. Jones was nominated for the position of ATF Director, on Jan. 24, 2013 by President Barack Obama. Prior to becoming ATF’s permanent Director, Jones served as the acting ATF Director starting Aug. 31, 2011. While serving as the acting Director of ATF, Jones was also the U. S. Attorney for the District of Minnesota, a post he held since Aug. 7, 2009. Jones served as both ATF acting Director and U.S. Attorney until his confirmation as ATF Director. Prior to becoming U.S. Attorney in 2009, Jones was a partner with a major national law firm in Minneapolis, where his practice focused on complex business litigation. He represented a number of organizations and individuals in criminal and civil regulatory matters. Jones is a fellow of the American College of Trial Lawyers. He also has served as special counsel to various boards of public and privately held companies. In that capacity, he led internal investigations and provided guidance on compliance and governance issues. Jones has held the position of U. S. Attorney twice in his career. President Clinton first appointed him in 1998, and he served until January 2001. Earlier in his career, Jones also was an Assistant U.S. Attorney in the District of Minnesota. During his initial tenure as a federal prosecutor, he conducted grand
Preventing Gun Violence:  
The Problem, the Solutions, and What the Second Amendment Allows  
Speaker Biographies  
June 24, 2014

jury investigations and was the lead trial lawyer in a number of federal prosecutions that involved drug trafficking, financial fraud, firearms, and violent crime. Jones received his Juris Doctor from the University of Minnesota Law School in 1983 and his B.A. from Macalester College in 1979.

**Minnesota Gun Violence Issues**

**John Choi** graduated from Hamline University School of Law and was a Humphrey Fellow at the University of Minnesota. Following law school, John was in private practice first at Hessian, McKasy, & Soderberg, and then at Kennedy & Graven, where he focused on government relations, administrative law, municipal law and civil litigation, rising to the level of partner within six years. John went on to become the Saint Paul City Attorney, leading a public law and prosecution office of 70 employees with an $8 million budget. Throughout his tenure, John was innovative in making reforms and finding efficiencies in the criminal justice system. Some of his accomplishments include: working with police and the Legislature to develop a new tool to prevent gang violence; forming a working group of 20 cities across the nation to hold lenders accountable in the mortgage foreclosure crisis; and working with police to create new protocols to obtain convictions and better serve victims of domestic abuse. In addition, John created innovative diversion and restorative justice programs in the areas of bad check prosecutions, invalid license cases and obstructing legal process arrests. Because of these accomplishments, John's colleagues from across the country recognized his innovative leadership in awarding him as the International Municipal Lawyers Association's Top City Attorney in the United States and Canada in 2009. John was pleased to have the opportunity to join the firm of McGrann, Shea, Carnival, Straughn & Lamb before becoming elected Ramsey County Attorney in the fall of 2010. As Ramsey County Attorney, John is working hard to continue to reform the criminal justice system and keep our community safe. He believes we must do everything we can to prevent crime from happening, effectively intervene in the lives of kids who get into trouble, and find innovative ways to prevent criminals from reoffending - all while doing everything we can to keep victims safe.

**Mike Freeman** is the elected Hennepin County Attorney. Mike has served as the Hennepin County Attorney for 14 years 1991 – 1999 and again since 2007. As the County Attorney, Mike serves as the chief executive of Minnesota's largest public law office, comprised of about 175 lawyers and 375 employees. This office issues approximately 7,000 adult and 10,000 juvenile criminal complaints each year and also provides complete legal representation to Hennepin County with its 8,000 employees, numerous departments and programs, and annual budget of nearly $1.8 billion. Mike received a B.A. from Rutgers University and a J.D. from the University of Minnesota Law School. Mike was elected to the Minnesota State Senate and served from 1983 to 1991. He was also the Democratic Farmer Labor-endorsed candidate for Governor of Minnesota in 1998. He also teaches graduate students at the Hubert H. Humphrey School of Public Affairs.
UPDATED EVIDENCE and POLICY DEVELOPMENTS on REDUCING GUN VIOLENCE IN AMERICA

Edited by DANIEL W. WEBSTER and JON S. VERNICK
Updated Evidence and Policy Developments on Reducing Gun Violence in America
Updated Evidence and Policy Developments on Reducing Gun Violence in America

EDITED BY

Daniel W. Webster, ScD, MPH
and Jon S. Vernick, JD, MPH

Center for Gun Policy and Research
Johns Hopkins Bloomberg School of Public Health

Johns Hopkins University Press
Baltimore

Contents

Introduction 1  
Daniel W. Webster and Jon S. Vernick

CHAPTER 3 Update: Thinking Differently about Mental Illness, Violence Risk, and Gun Rights 4  
Jeffrey W. Swanson and Allison G. Robertson

CHAPTER 4 Update: Enactment of Legislation to Protect Victims of Domestic Violence: A Story of State Successes 10  
April M. Zeoli and Shannon Frattaroli

CHAPTER 6 Update: Broadening Denial Criteria: New Developments 13  
Garen J. Wintemute

CHAPTER 7 Update: Comprehensive Background Checks: New Evidence and Rethinking “Comprehensive” 17  
Garen J. Wintemute

CHAPTER 8 Update: Preventing the Diversion of Guns to Criminals through Effective Firearm Sales Laws 20  
Daniel W. Webster, Jon S. Vernick, Emma E. McGinty, and Ted Alcorn

CHAPTER 10 Update: Adequate Oversight of Licensed Firearm Dealers Remains a Problem 24  
Jon S. Vernick and Daniel W. Webster

CHAPTER 11 Update: Enforcing Federal Laws against Firearms Traffickers: Policy and Legislative Progress in 2013 27  
Anthony A. Braga and Peter L. Gagliardi

CHAPTER 13 Update: Personalized Guns Progress Report 29  
Stephen P. Teret
Contents

CHAPTER 18 Update: The Second Amendment 33
Lawrence E. Rosenthal and Adam Winkler

CHAPTER 19 Update: Public Opinion on Gun Policy Following the Newtown Mass Shooting and the Disconnect with Political Action 36
Emma E. McGinty, Daniel W. Webster, Jon S. Vernick, and Colleen L. Barry

Biographies of Contributors 40
Introduction

Daniel W. Webster and Jon S. Vernick

Reducing Gun Violence in America: Informing Policy with Evidence and Analysis was published in 2013 only 44 days after twenty children and six adults were murdered in a mass shooting at Sandy Hook Elementary School in Newtown, Connecticut. This 2014 update to Reducing Gun Violence in America summarizes some key points made in the book and provides new data, research, policy developments, and analysis.

Despite the growing number of people killed and wounded in mass shootings and the more than 11,000 murders and 19,000 suicides with guns annually, little has been done to strengthen porous federal gun laws since 1996, when legislation was enacted to prohibit persons convicted of misdemeanor crimes of domestic violence from possessing firearms. In fact, since then, the U.S. Congress has actually weakened federal gun laws by giving the gun industry immunity against most lawsuits, preventing the release of crime gun trace data, mandating the destruction of data from background checks within 24 hours, and limiting research that might threaten the gun lobby.

There was reason to believe that the mass shooting in Newtown might reverse that trend. At a time when mass shootings were occurring with regularity...
in the United States, this tragic loss of so many young lives was a seminal event. The outpouring of grief and support for the families were overwhelming. News coverage of the event and of the many difficult issues it raised—the role of guns in violence, gun control, mental illness—was pervasive.

America had been shaken by many other mass shootings in recent years, but the tragedy at Newtown seemed different. Public opinion data collected following the Newtown shootings (see Reducing Gun Violence in America, chap. 19) demonstrated overwhelming, bipartisan support to strengthen policies to keep guns from high-risk individuals. New groups to advocate for stronger gun laws were formed, such as Moms Demand Action for Gun Sense in America and Americans for Responsible Solutions, while others saw expanded membership and activism, such as Mayors Against Illegal Guns and Faiths United to Prevent Gun Violence. The Center for American Progress, an influential think tank for progressive policies, took on gun policy as one of its priority issues.

Advocates were pleased to see President Barack Obama and Vice President Joseph Biden press for stronger gun laws, Congress hold hearings on the long-dormant issue, and several bills introduced to strengthen federal gun laws, including one cosponsored by Senators Joe Manchin (D-WV) and Pat Toomey (R-PA)—both from states with large numbers of gun owners—to expand background checks for some gun sales. But the background check bill did not garner sufficient support in the Senate to move forward and the Republican-led House refused to consider it or any other bill to strengthen gun laws. The only gun-related legislation passed was a renewal of a ban against firearms undetectable to metal detectors. The update by McGinty and colleagues in the present volume (chap. 19) articulates the structural hurdles for reforms at the federal level as well as the potential for optimism over the longer term.

In their update (chap. 8), Webster and colleagues note that gun laws were strengthened in 15 states plus the District of Columbia in 2013. The jurisdictions affected accounted for roughly 44% of the U.S. population. Eight of these states made fairly substantial changes, including Colorado, Delaware, and Illinois, each enacting background check requirements for all handgun sales. Maryland adopted a licensing system for handgun purchasers and stronger regulation of gun dealers. California, Connecticut, and Maryland expanded firearm prohibitions for high-risk individuals. Assault weapon bans or restrictions on large-capacity ammunition magazines were passed or strengthened in California,
Colorado, Connecticut, Maryland, and New York. Rosenthal and Winkler’s update (chap. 18) indicates that, although there have been a number of legal challenges to gun laws based on claims that the laws violate the Second Amendment, nearly all have been unsuccessful.

Moreover, the Obama administration took action on many relevant executive orders. As the update by Vernick and Webster (chap. 10) discusses, a director of Bureau of Alcohol, Tobacco, Firearms and Explosives was finally confirmed by the Senate and several other gun dealer–specific changes were made. Braga and Gagliardi (chap. 11) identify additional steps the administration could take to strengthen gun law enforcement.

In his essay on advances in gun safety technology (chap. 13), Teret describes progress on personalized guns, which cannot be fired by unauthorized users. This includes executive actions by President Obama, reports by the National Institute of Justice on the technology, challenge grants to design safer guns, and the introduction of legislation to eventually require that all guns be designed so that they are childproof or inoperable by unauthorized users.

We believe too little attention has been given to questions about those conditions that should disqualify someone, even if temporarily, from possessing firearms; the only exception has been issues associated with mental illness. Swanson and Robertson’s (chap. 3) update highlights the limits of focusing on mental illnesses as disqualifying conditions as a means to reduce criminal gun violence. Their update, congruent with updates by Wintemute (chaps. 6 and 7) and by Zeoli and Frattaroli (chap. 4), promotes a more data-driven approach to firearms policies to keep guns from individuals whose past criminal behavior, including domestic violence and alcohol offenses, should prohibit firearm possession.

There remains one other reason for at least some long-term optimism. In 2013, federal agencies made awards for or released requests for proposals on research on gun violence. The Institute of Medicine issued a report with recommendations for new federal funding of public health research on gun violence. We also saw new initiatives by private foundations to support research, policy analysis, and prevention efforts directed at reducing gun violence in the aftermath of the tragedy at Newtown. We hope that these efforts will lead to better science that can be applied to the pervasive problem of gun violence in America.
Politicians and pundits called the Newtown massacre “unspeakable.” That did not stop anyone from speaking about it. In the year following the Sandy Hook shooting, words poured out by the millions—in the mass media, task-force hearings, legislative debates, and difficult private conversations. After all that talk, what has been accomplished to prevent gun violence?

Some said the problem is all about guns. Others blamed our violent culture. But many Americans—across the political spectrum—concluded that gun violence is about mental illness. A post–Sandy Hook national opinion poll found a majority of gun owners as well as non-gun owners favored “increasing government spending to improve mental health screening and treatment as a strategy to prevent gun violence” (Barry et al. 2013). Is that the answer?

The average adult in this country believes that the average person with mental illness is dangerous (Pescosolido et al. 1999). That this media-fueled belief is wrong does not make it less influential in driving public support for violence prevention strategies targeting mental illness (McGinty et al. 2013; The Economist 2013).
One approach is to expand mandatory psychiatric treatment for purportedly dangerous mentally ill persons—to make them behave less dangerously (Torrey 2008). This is the idea behind broadening the scope of involuntary outpatient commitment as part of a gun violence prevention law, as New York State did in its (Newtown-inspired) Secure Ammunition and Firearms Enforcement (SAFE) Act of 2013. Another approach is to limit access to lethal means for persons assumed to be risky by dint of mental health adjudication. Our chapter in Reducing Gun Violence in America (Swanson et al. 2013) evaluated that second approach, as implemented in a single state. What can be made of it now?

The centerpiece of our essay was an empirical study of whether a state’s policy of reporting gun-disqualifying mental health adjudication records to the FBI’s National Instant Criminal Background Check System (NICS) can reduce violent crime in the community. We had assembled a longitudinal database of matched mental health, court, and arrest records for 23,292 persons diagnosed with schizophrenia, bipolar disorder, or major depression who were receiving services in Connecticut’s public behavioral healthcare system. We found a statistically significant 6% reduction in violent crime in gun-disqualified individuals attributable to Connecticut’s initiating a policy of reporting records to NICS in 2007.

On one level, our study’s take-home message was simply that states should proceed to report mental health adjudication records to the NICS—that this actually works to reduce violent crime. A lot of states seem to have gotten that message. Indeed, the number of mental health records deposited with the Federal Bureau of Investigation’s background check database rose 77% in one year—from 1.8 million in November 2012 to 3.2 million in November 2013. By comparison, the number of records in the NICS for other categories of prohibited persons rose by 21% in 2013 (FBI 2013a, 2013b).

On another level, our study suggested a more complex answer than simply populating the NICS with states’ civil commitment records. The NICS mental-health-reporting effect was indeed statistically significant, but it was substantively trivial; the policy affected only 7% of the study population of persons with serious mental illness, while 96% of the violent crimes recorded for that population were committed by persons who were not exposed to the policy. As a result, the estimated net reduction in violent crime in the population was miniscule—a tiny fraction of 1%.

Involuntary commitment orders are uncommon in Connecticut; federal firearms law is nested in widely variable state commitment practices (Appelbaum
and Swanson 2010). In many states, police commonly detain persons who are in a mental health crisis and transport them to a treatment facility, where they are briefly held before either being discharged or persuaded to sign into the hospital voluntarily. Neither of those dispositions currently results in gun disqualification in most states, notwithstanding elevated risk of harm to self or others that may coincide with involuntary hospitalization.

In April 2013, Connecticut passed wide-ranging gun safety legislation that was intended to address the problem of presumably risky people having access to guns. The new law vastly expanded the mental health criteria for firearms disqualification in the state: it prohibits persons from accessing guns for six months following any voluntary hospitalization for mental health treatment. This could include anyone who comes knocking on the door of a mental health facility who could benefit from an inpatient stay and is able and willing to consent to admission. Many mental health stakeholders in Connecticut reacted to this provision with alarm. Some clinicians, in particular, expressed concern that it might deter people in a mental health crisis from seeking hospital treatment (Rama 2013).

New York’s SAFE Act provided another instructive example of the hazards of crisis-driven policy. Governor Andrew M. Cuomo and state lawmakers rushed to enact sweeping new gun regulations just weeks after the Sandy Hook shooting. The law requires mental health professionals to report to the police the names of patients who threaten to harm themselves or others, to the end that law enforcement may revoke any handgun permit possessed by a reportedly risky mentally ill person. The reporting mandate on mental health clinicians provoked strong controversy and created strange bedfellows, as the psychiatric establishment and gun rights advocates—neither having been consulted in advance—both opposed the SAFE Act for entirely different reasons (Appelbaum 2013; Swanson 2013).

We do need better mental health care in America. An estimated 3.5 million people with serious mental illnesses are going without treatment (Kessler et al. 2001). That is scandalous. But mentally ill people are not the cause of the violence problem. If schizophrenia, bipolar disorder, and depression were cured, our society’s problem of violence would diminish by only about 4% (Swanson 1994). Does that mean mental illness is irrelevant to gun prevention policy? The answer is no, for two reasons.

One reason is suicide, which accounts for 6% of gun deaths (Centers for Disease Control and Prevention 2013). Mental illnesses are a strong contributing
factor in suicide. Another reason, as mentioned, is that people with serious mental illness who encounter the involuntary treatment system pose an elevated risk for violence toward themselves or others under certain circumstances and during certain times, such as the period following an involuntary hospitalization. Temporarily limiting access to firearms for people with mental illnesses—during the particular period when risk is heightened—amounts to a meaningful public health opportunity.

The opportunity must be tempered by the reality that a constitutional right is at stake. The reason that federal law predicates gun prohibition on involuntary civil commitment is not only about the putative correlation of gun violence risk with the dangerousness criteria for commitment. It is also about the civil commitment process itself; that an adversarial court proceeding, with representation of the parties by counsel, affords people due process for the restriction of liberty in hospital confinement and, by proxy, for the removal of a constitutional right to bear arms.

The practical problem with the current federal approach, as implemented variously across the states, is that it misses a lot of people at risk who never get committed, while it prohibits gun ownership by many people after they no longer pose a risk of harming others or themselves. As such, the criteria are both underinclusive and overinclusive.

In theory, we could solve one part of the problem by simply expanding the category of gun-disqualified persons to include anyone who might be at risk. But that introduces another problem—the possibility of infringing on people’s civil rights without due process. And just focusing on persons with mental illness puts a very low ceiling on the proportion of violence that could possibly be prevented. It is time to think differently about gun violence as a public health problem. From that perspective, a fair and effective policy should start with risk, not mental illness.

The Consortium for Risk-Based Firearms Policy has crafted state and federal policy recommendations premised on three ideas: (1) that gun violence could be reduced by time-limited restrictions on gun access by persons based on evidence of their individual risk of harming themselves or others; (2) that a history of any kind of violence—particularly with criminal justice involvement—is a better predictor of future gun violence than is the broad category of persons diagnosed with serious mental illnesses; and (3) that expanding gun disqualification based on evidence of risk must achieve balance with policies that offer a timely opportunity for a clinically informed restoration of rights (CRBFP 2013a, 2013b).
In the end, following these principles could help us find our way to more
effective policies that will meaningfully reduce the scourge of gun violence in
America while safeguarding the rights of lawful gun owners. The problem is
multifaceted and longstanding. There is no quick fix. But in the current envi-
ronment where guns have become a radioactive political symbol, one can only
hope that a risk-based approach to limiting firearms would emerge as at least
one square inch of common real estate between those who are most concerned
with the individual right to bear arms and those inclined toward greater regu-
lation of guns in the public interest. We desperately need a place to start.

REFERENCES

Appelbaum, Paul S., and Jeffrey W. Swanson. 2010. “Gun Laws and Mental Illness: How
Sensible Are the Current Restrictions?” Psychiatric Services 61: 652–654.
“After Newtown—Public Opinion on Gun Policy and Mental Illness.” New En-
Centers for Disease Control and Prevention. 2013. Injury Prevention & Control: Data & Statistics Web-based Injury Statistics Query and Reporting System (WISQA-
wisqars/index.html
.pdf
2012-operations-report
In Reducing Gun Violence in America: Informing Policy with Evidence and
Women are more likely to be killed by intimate partners than by other offender groups and the majority of these homicides are committed with firearms (US-DOJ and FBI 2011). Domestic violence and stalking increase the risk of being killed by one’s intimate partner (Bailey et al. 1997; Campbell et al. 2003; McFarlane et al. 1999; Smith, Moracco, and Butts 1998). This elevated risk of intimate partner homicide (IPH) increases fivefold or more when a violent intimate has access to a gun (Bailey et al. 1997; Campbell et al. 2003; Kellerman et al. 1993).

In 2013, there were numerous attempts to pass legislation at both the federal and state level to reduce IPH by restricting domestic violence offenders’ access to firearms. Several bills were introduced in the 113th U.S. Congress that were designed to extend protections of domestic violence victims from armed and violent intimate partners by expanding or clarifying the definition of intimate partner (H.R. 1177; H.R. 1914; S. 1290); extending the domestic violence restraining-order firearm prohibition to include ex parte restraining orders (H.R. 1177); including misdemeanor stalking as a disqualifying conviction for firearm purchase (H.R. 2648; S. 1290); and improving enforcement of current
firearms prohibitions (H.R. 848; H.R. 3566). Despite receiving wide support from national- and state-level victims’ advocacy groups, there was no significant movement on these bills.

Consistent with a recent trend in state legislatures, multiple states enacted legislation in 2013 to reduce intimate partner violence offenders’ access to firearms.¹ For example, Utah’s legislators expanded their restraining-order firearm prohibition law to include dating relationships. Minnesota enacted a law requiring the reporting of prohibited persons to the National Instant Criminal Background Check System “as soon as practicable.” This law covers not only those convicted of domestic violence misdemeanors but also those who are sent to pretrial diversion programs, which prohibit them from accessing firearms until their charges are dismissed. Implementation of these laws will make access to firearms more difficult for prohibited persons, including domestic violence offenders.

New state laws also focused on improving implementation of existing domestic violence firearms laws. Colorado law now requires those subject to domestic violence restraining orders and those convicted of misdemeanor crimes of domestic violence to relinquish their firearms. Connecticut also now specifies the protocol for those under restraining orders to surrender their firearms. This attention to the processes of enforcing existing laws is important. The title of our chapter in Reducing Gun Violence in America, “Evidence for Optimism,” reflects our reading of the literature and the potential of laws that restrict respondents to domestic violence restraining orders from purchasing and possessing guns. Such laws are associated with reductions in IPH at the state (Vigdor and Mercy 2003) and local (Zeoli and Webster 2010) levels. These effects are likely the result of purchase prohibitions, as efforts to remove guns from respondents to restraining orders are uncommon (Klein 2006). A small number of localities do have initiatives to remove firearms from respondents to protective orders (Klein 2006), and research published this year offers insight into how to effectively realize the greater potential of these laws (Wintemute et al. 2013).

As we look ahead, our optimism remains rooted in the increasing strength of the evidence that suggests that more states are engaging in efforts to ensure that violent intimates are effectively prohibited from purchasing and possessing guns.
NOTE


REFERENCES


To amend chapter 44 of title 18, United States Code, to prohibit the sale or other disposition of a firearm to, and the possession, shipment, transportation, or receipt of a firearm by, certain classes of high-risk individuals, H.R. 2648, 113th Cong. (2013).


Federal law prevents the purchase and possession of firearms by anyone who
has been convicted of a felony or a “misdemeanor crime of domestic violence,”
who is “an unlawful user of or addicted to any controlled substance,” who has
been “adjudicated as a mental defective” or “committed to any mental insti-
tution,” and others.¹ Many states have gone further, and to good effect; Cali-
ifornia’s firearm prohibitions for persons convicted of violent misdemeanors
have been shown to prevent violent crime, for example.² This update reviews
new information on the need for—and support for—expanding denial crite-
dia, with a particular focus on denial for alcohol abuse.

Vitesse and colleagues shed new light on the potential benefits of expanding
denial criteria.³ Their data come from the 2004 Bureau of Justice Statistics
nationwide inmate survey and are for 13 states that did not have firearm prohi-
bitions related to any of the following: (1) age less than 21 years; (2) serious ju-
venile offenses; (3) violent misdemeanor convictions; (4) alcohol abuse; or
(5) drug abuse. All subjects in their study were incarcerated for crimes involv-
ing firearms, most of which also involved violence. Well over half of the sub-
jects (59.7%) were not subject to firearm prohibitions when they committed
their crimes; this would have been reduced by nearly half, to 30.8%, had the states (or the federal government) enacted those five additional prohibitions.

A history of alcohol abuse has repeatedly been proposed as grounds for a firearm prohibition. Under federal law, alcohol is specifically excluded from the definition of controlled substances; neither addiction to nor unlawful use of alcohol prohibits firearm ownership. A 2013 review by the Law Center to Prevent Gun Violence identified three states (Indiana, Maryland, and Pennsylvania) with firearm prohibitions related to multiple convictions for driving under the influence or related offenses. Other states used less well defined criteria to identify a population of alcohol abusers to whom a firearm prohibition might apply. No data on enforcement or effectiveness were available.

There is conclusive evidence, however, linking current and prior alcohol abuse or dependence to risk for committing violence against others or oneself. For example, approximately 37% of persons incarcerated for violent crimes are intoxicated when those crimes are committed, by their own report. About one third of homicide and suicide victims test positive for alcohol, and at least 60% of those meet legal criteria for intoxication. Multiple large-scale surveys have shown substantial increases in risk for future violence related to a prior history of alcohol abuse or dependence. Studies of DUI offenders have found a very high prevalence of alcohol dependence and increased rates of criminal activity.

In January 2013, the Summit on Reducing Gun Violence in America working group convened by Johns Hopkins University recommended a 10-year firearms prohibition for persons convicted of DUI or similar offenses on two or more occasions within three years. Such legislation was passed by the California legislature but vetoed by the governor. In his veto message, the governor stated that he was “not persuaded that it is necessary to prohibit gun ownership on the basis of crimes that are non-felonies, non-violent and do not involve misuse of a firearm.” Research now in development will assess the risk for future criminal activity associated with a prior history of alcohol abuse or dependence among firearm owners.

The Consortium for Risk-Based Firearm Policy—a group of experts in gun policy, mental health, psychiatry, epidemiology, law, and law enforcement—recently endorsed five-year prohibitions against firearm possession for violent misdemeanants and persons with multiple convictions related to alcohol or controlled substance abuse. A new survey of federally licensed firearm retailers (gun dealers and pawnbrokers) in 43 states found strong support for
such polices. Majorities favoring prohibitions based on convictions for specific crimes were as follows: 84.8% for publicly displaying a firearm in a threatening manner, 80.7% for possession of equipment for illegal drug use, 70.7% for multiple DUI convictions, 67.4% for assault and battery not involving a lethal weapon or serious injury, and 53.1% for resisting arrest.\(^\text{15}\) Nine of 10 retailers (90.1%) supported a firearms prohibition for persons with “alcohol abuse and repeated cases of alcohol-related violence.”

Current federal and state prohibitions on access to firearms contain significant gaps in coverage that allow individuals at increased risk for violent crime to purchase and possess firearms. Broader prohibitions have been shown to be effective where they have been examined, and there is widespread support for such measures.

REFERENCES

1. 18 USC §922(d).


Comprehensive background checks for firearm transfers are feasible and warranted. In this update, I summarize new evidence on the need for comprehensive background checks, particularly as regards the sources of firearms used in crime and those sold on the Internet. I also suggest that we should rethink the meaning of “comprehensive” in light of new developments in California. Just as we take measures to prevent prohibited persons from acquiring firearms, we should act when people who have legally acquired firearms subsequently become prohibited persons.

The best available evidence is that approximately 40% of all firearm transfers occur between private parties—without background checks except in states that require them. Data from a nationally representative survey of state prisoners indicate that this percentage approximately doubles for firearm acquisitions made with criminal intent. These data come from the 2004 Bureau of Justice Statistics nationwide inmate survey and are for 13 states with lax regulation of firearms sales. Felons who were incarcerated for firearm-related crimes were asked how they had acquired the firearms they used in committing those crimes. Of those who responded, only 15.4% purchased their firearms from a
gun store or pawnshop. Of those who were already prohibited persons when they acquired their firearms, only 4.8% bought them from a licensed retailer. Clearly, unlicensed sources predominate in acquisition of firearms for criminal use.

Two new studies (neither published in a peer-reviewed source) provide a clearer sense of the Internet’s role in facilitating direct private-party firearm sales. Both focus on Armslist.com, a well-known Web-based broker for firearm sales of all types. Mayors Against Illegal Guns examined the characteristics of private parties seeking to purchase firearms on Armslist.com during February–May 2013.6 They were able to identify and examine criminal records for 607 individuals who placed “want to buy” notices and found that 3.3% of those individuals were prohibited persons. This is double the percentage of persons who are found to be prohibited persons on the background checks that must be conducted for firearm purchases from licensed retailers.7 Those purchases, of course, are denied; purchases by prohibited persons via Armslist.com simply proceed undetected.

Third Way and Americans for Responsible Solutions examined all offers by private parties to sell firearms and requests to purchase firearms from private parties listed on Armslist.com for a single day in August.8 They found that both types of postings were less common in states where some or all private-party sales must be routed through licensed retailers so that background checks can be conducted, suggesting that such policies do prevent undocumented, anonymous, and illegal firearm sales.

This update closes with a look ahead at a broader approach to preventing access to firearms by prohibited persons. Since 2006, California’s Armed and Prohibited Persons System (APPS), operated by the state’s Department of Justice (CalDOJ), has identified individuals who have recently become prohibited persons and who have records of firearm ownership in the state’s archive of handgun purchases, assault weapon registrations, and concealed carry weapon (CCW) permit applications. These new prohibitions might arise from criminal convictions, domestic violence restraining orders, or emergency mental illness hospitalizations related to dangerousness to self or others. On a pilot basis, CalDOJ personnel have contacted selected armed and prohibited persons to recover their firearms, handling about 2,000 cases and recovering approximately 2,000 firearms per year, without incident. In 2013, CalDOJ was authorized and funded to expand the program to full statewide coverage, eliminating a backlog of 20,000 cases and addressing incident cases in a timely manner.
APPs’s effectiveness in preventing firearm violence is not known, but a formal evaluation of the expanded program is being planned.

Private-party firearm transfers are common. Their anonymity and the lack of background checks facilitate access to firearms by prohibited persons and criminal firearm trafficking. The Internet may make such transfers easier than ever to accomplish. Comprehensive background check requirements would be very helpful, and new efforts to disarm prohibited persons show promise.

REFERENCES


In our chapter in *Reducing Gun Violence in America* (Webster et al. 2013), we presented data on how criminals exploit weaknesses in current federal and state gun laws to acquire guns, usually in private-party transactions that are not subject to background check or record-keeping requirements. Though criminals typically obtain guns directly from private sellers, gun trafficking investigations and studies using gun trace data suggest that a small share of licensed dealers facilitate the diversion of guns from the legal to illegal market, where criminals obtain them from straw purchasers and traffickers. We highlighted several studies and new data which show that the number of guns diverted to criminals is negatively associated with the regulation of handgun sales by unlicensed private sellers, permit-to-purchase (PTP) licensing of handgun purchasers that require in-person applications at law enforcement agencies, and measures to increase the accountability of licensed gun dealers (Webster et al. 2006; Webster et al. 2009; Webster et al. 2013; Webster and Vernick 2013).

Kahane (2013) studied the flow of guns from the state of their original sale to criminals in other states and produced findings that were consistent with
those we presented previously (Webster et al. 2013). Controlling for many non-policy factors that might influence interstate gun trafficking, the study showed that stronger firearm sales regulations deterred the export of crime guns and reduced criminal use of locally purchased firearms. Specific policies independently associated with lower exporting of crime guns to other states were universal background checks for firearm sales, requirements that gun owners report lost or stolen firearms, and laws giving law enforcement discretion in issuing permits for carrying concealed weapons (CCW). A key weakness of the study was its measurement of gun policies. All PTP handgun laws were treated as equal despite substantial differences in restrictiveness and requirements that potential purchasers apply in-person at law enforcement agencies where they are usually fingerprinted, factors that we found made them more effective (Webster et al. 2013). States that give police discretion in issuing CCW permits also have stricter policies for issuing permits to purchase handguns, and the negative association between discretionary CCW permit laws and fewer guns exported to criminals likely reflects the effects of stricter PTP laws.

We previously examined the impact of Missouri’s repeal of its relatively strong PTP handgun law, effective on August 28, 2007 (Webster et al. 2013). The repeal of the PTP law also eliminated the state’s requirement that handgun sales involving unlicensed, private sellers be subject to a background check. Following the repeal, we found a twofold increase in the percentage of crime guns recovered by police in Missouri with a recent retail sale date and a significant increase in the share of crime guns that had been sold by in-state gun dealers (Webster et al. 2013). More recently we also found that the number of guns sold in Missouri and later recovered by police in Illinois and Iowa—two states with PTP handgun laws—increased 37% from 2006 to 2012 (133 to 182), when the overall number of guns recovered by police in those states declined 6% (Bureau of Alcohol, Tobacco, Firearms and Explosives 2013). But more importantly, after controlling for changes in crime, incarceration, police, poverty, and unemployment as well as other key laws, the repeal of Missouri’s PTP law was associated with an increase of 1 homicide per every 100,000 population per year through 2012, translating to about 55 to 60 additional homicides per year. The increase occurred only for homicides committed with firearms and was observed in each of the most populous counties in the state, but it did not occur in any of the eight states bordering Missouri (Webster, Crifasi, and Vernick in press).

Although the mass shooting in Newtown, Connecticut, on December 14, 2012, led to a surge in advocacy for stronger federal gun laws, Congress’s only
legislative action on guns in 2013 was to renew a ban on undetectable firearms. A proposal by Senators Joe Manchin (D-WV) and Pat Toomey (R-PA) to require background checks for firearm sales by unlicensed sellers when the transaction occurred at a gun show or was initiated as a result of an advertisement on the Internet failed to pass in the U.S. Senate and was not taken up by the House of Representatives. (No modern Congress passed fewer bills in a year than did the 113th Congress.)

A number of states strengthened laws designed to keep guns from criminals and other high-risk groups in 2013. Colorado, Delaware, Illinois, and New York each enacted legislation to extend background check requirements when guns are sold by unlicensed sellers. Three of these states (Delaware, Illinois, and New York) and Maryland passed laws requiring gun owners to report lost or stolen firearms. Maryland arguably took the biggest step with its Firearm Safety Act of 2013. In addition to the lost-and-stolen-requirement, the law included a PTP handgun law with fingerprint verification and mandated safety training, increased state police authority to take action against gun dealers’ licenses if dealers fail to comply with gun laws, and mandated that new state residents register their handguns. Maryland already required background checks for all handgun sales and banned the sale of junk guns, measures that could deter the diversion of guns to criminals and reduce gun violence (Webster et al. 2009; Webster et al. 2013; Webster, Vernick, and Bulzachelli 2006; Webster, Vernick, and Hepburn, 2002).

In summary, new data relevant to the effectiveness of policies to enhance accountability in firearms transactions and thereby reduce diversions were consistent with prior research demonstrating the effectiveness of background check requirements for all firearms transactions, permit-to-purchase licensing for handguns, and mandatory reporting of lost or stolen firearms. Though none of the policies recommended by experts in *Reducing Gun Violence in America* to prevent the diversion of guns to prohibited persons was adopted at the federal level, recommended policies were adopted by several populous states in 2013.

**Note**

1. The author incorrectly labeled these laws as background checks for guns sold at gun shows when the policies examined extended to guns sold at any venue
Preventing Diversion of Guns to Criminals through Effective Firearm Sales Laws

REFERENCES


Adequate Oversight of Licensed Firearm Dealers Remains a Problem

Jon S. Vernick and Daniel W. Webster

Firearm dealers are important source of guns for criminals. A small proportion of dealers sell the majority of guns recovered by the police. Prior research has demonstrated that enhanced oversight and inspection of dealers reduces illegal gun trafficking. Yet regulation and oversight of gun dealers at the federal and state levels remains inadequate.

Federal law requires a person “engaged in the business” of selling firearms to be licensed (called an FFL) by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). ATF is also responsible for oversight of licensed dealers. In an April 2013 report, the U.S. Department of Justice’s Office of the Inspector General concluded that “ATF did not meet its goal of inspecting all FFLs on a cyclical basis, resulting in over 58 percent of FFLs not being inspected within 5 years.” The report attributed this deficiency to insufficient investigatory resources within ATF. In recent years, ATF has used a number of metrics to identify “high risk” FFLs that are more likely to be involved in gun trafficking. These high-risk FFLs are supposed to be targeted for more frequent discretionary inspections by ATF. But the Inspector General’s report noted that ATF lacked a system to track whether such inspections were occurring.\(^1\)
Recognizing the role of firearm dealers in reducing access to guns for criminals, President Barack Obama included several executive actions relevant to dealers in his January 2013 plan to reduce gun violence. President Obama directed ATF to give FFLs guidance on how to facilitate voluntary background checks when private sellers wish to transfer their firearms. The president also committed to obtaining Senate confirmation for a director of ATF. On July 31, 2013, B. Todd Jones was confirmed as ATF director, marking the first time in six years that ATF had had a confirmed director. The president also ordered ATF to publish an annual report on lost and stolen firearms. FFLs are required to report to ATF any firearms lost or stolen from their inventory within 48 hours of discovery. Guns stolen from dealers are especially problematic because they directly enter the illegal market and tracing their source is particularly difficult. In a June 2013 report, ATF determined that 16,667 firearms were reported lost or stolen from an FFL in 2012. An additional 173,000 firearms were reported lost or stolen from persons who were not FFLs. Finally, the president ordered that all federal law enforcement agencies must submit recovered firearms for tracing to identify gun traffickers, including problem gun dealers.

In the absence of effective federal oversight of gun dealers, the role of states is even more important. In the year since the shooting at Sandy Hook Elementary School, however, just one state—Maryland—enacted new legislation to improve gun dealer regulation. With the enactment of the Firearm Safety Act of 2013, Maryland made a number of changes to its gun dealer legislation. Applications for a state gun dealer license may no longer be approved if a person who is not eligible for a license, or whose license has previously been revoked or suspended, will participate in the management of the gun business or hold a legal or equitable interest in the business. This change was intended to address the notorious case of a gun dealer in Maryland who sought to transfer his business to his mother’s name after his license was revoked. The new law also allows a gun dealer’s state license to be revoked for failure to maintain appropriate records of gun sales. Gun sales records allow law enforcement to determine if the dealer can account for his or her inventory or is selling guns “off the books.” In addition, the Maryland state police are now required to inspect the inventory and records of gun dealers at least once every two years, making Maryland one of just three states mandating regular dealer inspections. Finally, dealers must notify all gun buyers that a lost or stolen firearm must be reported to local law enforcement within 72 hours.
With more than 50,000 FFLs in the United States, oversight and enforcement of gun dealers remains a challenge. However, because only a small number of these dealers are intentionally diverting guns to criminals, identifying problem dealers and focusing scarce law enforcement resources on high-risk dealers can pay big rewards in the reduction of illegal gun trafficking and access to guns by criminals.

REFERENCES

Enforcing Federal Laws against Firearms Traffickers
Policy and Legislative Progress in 2013

Anthony A. Braga and Peter L. Gagliardi

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), often working with state and local law enforcement, investigates criminal firearms trafficking, arrests perpetrators, and makes referrals to U.S. Attorneys for prosecution. Unfortunately, there are some major obstacles that hinder law enforcement efforts to hold gun traffickers accountable for their crimes. To help address these persistent problems, we made six policy and legislative recommendations in Reducing Gun Violence in America to improve the capacity of the U.S. Department of Justice to enforce federal laws against gun traffickers. Over the course of 2013, some noteworthy progress has been made in two key areas: (1) creating a strong and effective ATF; and (2) developing and implementing regional crime gun-processing protocols.

ATF had been an underfunded agency led by an acting director between 2004 and 2012. President Barack Obama addressed ATF’s unstable leadership problem by nominating B. Todd Jones, then the acting ATF director and U.S. Attorney for Minnesota, as the next director on January 24, 2013. Mr. Jones was confirmed by the U.S. Senate on July 31 and sworn in as the ATF director on August 29, 2013. The Obama administration has also requested, and the
U.S. Senate’s Appropriations Committee has approved, a $1.3 billion budget for ATF, representing a nearly $100 million increase over fiscal year 2013. The increased funds include mandates to update and expand the National Integrated Ballistics Information Network (NIBIN) by replacing outdated equipment and supporting the comprehensive submission of crime gun evidence by state and local crime laboratories, hiring 160 additional ATF agents for criminal enforcement efforts, and hiring 60 additional industry operations inspectors to further support ATF’s regulatory oversight responsibilities. If the U.S. House of Representatives agrees with the higher ATF funding levels identified by the Senate during the finalization of the FY2014 budget, the operational capacity of ATF will be strengthened.

Regional crime gun–processing protocols support gun crime investigations in local jurisdictions by ensuring that participating federal, state, and local law enforcement agencies comprehensively process all recovered crime guns and related evidence. In October 2012, the International Association of Chiefs of Police adopted a resolution (Regional Crime Gun Processing Protocols, number FC.028.a12) that views regionally applied crime gun and evidence processing protocols as a best practice for the investigation of firearm-related crimes. A growing number of state and local law enforcement leaders have recognized the importance of having mutually agreed upon protocols in place. For instance, on September 20, 2013, New Jersey Governor Chris Christie signed a new law (PL 2013 chapter 162) that requires New Jersey law enforcement agencies to use the National Crime Information Center to determine whether a firearm has been reported stolen, the ATF eTrace system to establish the identity of a firearm’s first purchaser, and NIBIN to ascertain whether a particular firearm is related to any other criminal event or person. In a letter that he sent to the New Jersey legislature, Governor Christie stated that codifying existing law enforcement regulations is sensible and ensures that all state and local officials follow a single set of practices.

These are encouraging developments, but there has been no substantive progress made in our four other focal areas: (1) requiring the execution of private sales through federal firearms licensees; (2) enacting effective firearms trafficking statutes; (3) revisiting sentencing guidelines for firearms trafficking crimes; and (4) publishing national crime gun trace reports. Although not an exhaustive list, these policy and legislative changes are necessary to ensure that the legal firearms supply chain is secure from criminals.
A personalized gun is one that, by design integral to the gun itself as opposed to an external locking device, can be fired only by the authorized user or users. If all newly manufactured guns were personalized guns, there would be a meaningful reduction in gun deaths. Considerable progress has been made on the personalized gun issue since mid-January 2013. What follows are brief mentions of the most important aspects of that progress.

Policy Advancements

Legislation relevant to personalized guns involves mainly, but not exclusively, the issue of whether to mandate that all new handguns be made so that they are personalized (or smart, childproof, owner-authorized, or user-authorized, all being synonymous). In the past year, there has been action at both the state and federal levels. On the federal level, Rep. John Tierney (D-MA) introduced a bill that would require all new handguns to be made owner-authorized and existing handguns to be retrofitted with smart technology. (The bill, H.R. 2005, can be accessed at http://www.govtrack.us/congress/bills/113/hr2005.)
California State Senator Mark DeSaulnier introduced in the California legislature SB-293, regarding owner-authorized guns. This bill, in amended form, passed both the senate and the assembly, but it has not yet been sent to the governor. (The bill can be accessed at http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB293.) It would require all new handguns sold in California to be made owner-authorized or personalized.

Another topic for legislation at the federal level is amending the Protection in Lawful Commerce in Arms Act (PLCAA), enacted into law in 2005. PLCAA granted gun manufacturers broad immunity from liability. This is relevant to the personalized gun issue in that litigation for failure to make a gun as safe as feasible can be an effective tool in getting manufacturers to utilize already existing technology. A bill was filed by Congressman Adam Schiff (D-CA) to amended PLCAA to allow for some lawsuits based on gun industry misconduct.

Technology Advancements

When President Barack Obama issued his 23 executive orders on January 26, 2013, one of the orders was to the Justice Department to explore the potential uses of gun technology as a means of reducing gun violence. Attorney General Eric Holder then commissioned the National Institute of Justice (NIJ) to investigate existing and future personalization technologies. A meeting hosted by NIJ took place in March 2013 and was attended by Attorney General Holder and his staff, members of other government agencies, gun manufacturers, inventors, and public health scholars. In the months that followed the meeting, the staff of NIJ explored in greater depth the details of existing and proposed technologies. On June 17, 2013, NIJ issued its report, entitled A Review of Gun Safety Technologies (which is available at https://www.ncjrs.gov/pdffiles1/nij/242500.pdf). The report found that “personalized firearms are not currently commercially available in the United States, but that at least three products—two handguns and a shotgun—are at a technology maturity level that could at least be described as commercializable or pre-production. The manufacturers of the two handguns say they are planning to bring their products to market in 2013.” This NIJ report is of great importance in that it rebuts the longstanding claim made by many who are opposed to personalized guns that the technology is infeasible.
Scholarly Advancements

One of President Obama’s executive orders issued in January 2013 was for the federal Centers for Disease Control and Prevention (CDC) to resume funding of gun violence prevention research. The CDC had discontinued such funding many years ago when it felt pressure from Congress, based upon the political influence of the NRA. As a result of the executive order, the CDC asked the Institute of Medicine (IOM), which is part of the National Academies of Science, to convene a meeting to discuss research priorities. One of the sessions of this meeting focused on personalized guns. IOM then issued a formal report on June 5, 2013 (which can be accessed at http://www.iom.edu/Reports/2013/Priorities-for-Research-to-Reduce-the-Threat-of-Firearm-Related-Violence.aspx). The IOM recommendations to the CDC as to what research should be funded include personalized gun technology.

A conference was held in Berlin, Germany, in mid-June 2013 at the offices of the German Foreign Ministry. It was attended by policy makers from Europe and elsewhere, gun manufacturers, inventors, and academics. Among the gun makers attending the conference were the principals of the Armatix Corporation in Germany and TriggerSmart in Ireland. These are the two leading companies recognized in the previously mentioned NIJ report as leading the development of personalized guns. The conference dealt, in part, with personalized guns. (A chapter on this topic, written for the conference, can be accessed at http://www.smallarmssurvey.org/fileadmin/docs/L-External-publications/2013/SAS-2013-Personalized-Firearms-Perspectives-Conference-Paper.pdf.)

More than a decade ago, New Jersey passed a law that would require all new handguns sold in New Jersey to be childproof, as defined in the law, three years after the first childproof gun is offered for retail sale. Armatix now has plans to sell guns soon in the United States that will meet New Jersey’s definition of a childproof gun, which will activate the three-year clock of the New Jersey law.

Social Advancements

Several venture capitalists who have designated themselves as the Sandy Hook Initiative have created a contest for additional technological advances for personalized guns, offering a prize of $1 million. Further information on this contest is available at http://www.smarttechfoundation.org/.
Media Attention

A great deal of attention to personalized guns has appeared in the print media over the past year. With regard to electronic media, the *PBS NewsHour* did a lengthy piece on personalized guns that focused on both technology and policy.
In 2013, the U.S. Supreme Court declined to take any Second Amendment cases, leaving both the scope of the right to keep and bear arms and the appropriate methodology for deciding Second Amendment cases uncertain. Decisions in the lower courts, both federal and state, continued to reflect a pattern of upholding firearms laws unless they impose what are regarded as very severe burdens on the right to keep and bear arms.

In recent decisions upholding challenged firearms regulations, some courts have reasoned that regulations that fall within the categories branded presumptively lawful in District of Columbia v. Heller should be sustained. Others have reasoned that longstanding regulations are entitled to deference. The clearest trend, however, is the continuing embrace by the courts of the two-step test detailed in our contribution to Reducing Gun Violence in America. That test asks whether a regulation falls within the framing-era conception of the right to keep and bear arms and, if so, whether the law satisfies means-ends scrutiny. On the second prong, courts uniformly reject the claim that all regulations that limit the ability to keep and bear arms in common civilian use are necessarily subject to strict judicial scrutiny. Most commonly, intermediate scrutiny is
applied. Still, the Illinois Supreme Court followed an earlier federal appellate decision invalidating a statute that imposed a complete prohibition on carrying firearms in public. There has also been speculation that the Second Amendment might limit the ability of police to stop and frisk individuals whom they believe to be armed. Less complete prohibitions that require individuals to obtain a permit and demonstrate particularized need to carry a firearm for self-defense, however, have been upheld.

NOTES


7. See United States v. Williams, 731 F.3d 678, 690–94 (7th Cir. 2013) (Hamilton, J., concurring in part and concurring in the judgment).
Public Opinion on Gun Policy Following the Newtown Mass Shooting and the Disconnect with Political Action

Emma E. McGinty, Daniel W. Webster, Jon S. Vernick, and Colleen L. Barry

The December 14, 2012, shooting at Sandy Hook Elementary school prompted a national dialogue about the causes of, and solutions to, gun violence. The weeks and months following the shooting were a rare window of opportunity for policy makers to garner the public support and political will needed to strengthen gun laws in the United States, and during this period state and federal law makers introduced numerous gun violence prevention policy proposals. During the month following the Newtown shooting (January 2–14), we conducted a national public opinion survey to gauge Americans’ support for many of the gun policies introduced by legislators across the country \((N=2,703)\). We found that large majorities of Americans—including gun owners and Republicans—supported a wide range of gun policies, including policies to enhance the background check system for gun sales, to prohibit certain dangerous persons (e.g., those convicted of a serious juvenile crime) from having guns, to institute greater oversight of gun dealers, and to prevent people with mental illness from having guns.\(^1\) This public opinion study used more rigorous methods than are typically employed in polls, including surveying large national samples of gun owners and non-gun owners living in
homes with guns to allow for more precise estimates of policy support overall and within key subgroups.

In spite of widespread public support for strengthening gun violence prevention policies, the U.S. Congress failed to pass any federal gun policy legislation. Perhaps most notably, Congress failed to pass legislation to strengthen the background check system for gun sales. This despite the fact that violence prevention research suggests that a strong background check system is necessary to keep guns out of the hands of dangerous people, and we found that the majority (89%) of the American public—including Republicans (86%), gun owners (84%), and members of the National Rifle Association (NRA) (74%)—supported requiring background checks for all gun sales.\(^1\)

Why, in spite of widespread public support, did federal gun violence prevention policies proposed in the aftermath of the Sandy Hook shooting fail to become law? The structure of the U.S. government is one contributing factor. First, all states, regardless of population size, are equally represented by two senators; so, senators from rural states with small populations and high rates of gun ownership exert the same amount of influence as senators from states with large populations and lower rates of gun ownership.\(^2\) In addition, U.S. Senate rules require 60 votes for cloture (required for an up or down vote on a bill). Republicans, who have become increasingly reliant on the gun lobby for campaign contributions and grassroots support, have used this rule in recent years to prevent bills it does not support from even getting a vote.

This is not the whole picture, however; our survey results showed that large proportions of gun owners support strengthening gun policies. Many legislators who voted against expanding background checks claimed they represented constituents’ interests. However, we found that in states where both U.S. senators supported the Manchin-Toomey federal background checks bill, 91% of respondents supported universal background checks for gun sales, compared to 88% in states where one senator voted against the bill, and 87% in states where both senators voted against the bill. Clearly, factors besides public opinion influence politicians’ voting behavior.

Interest group theory provides some insight into why public support for stronger gun policies may not be enough to prompt meaningful policy action.\(^3\) In the gun policy arena, interest groups in favor of strengthening gun laws—like the Brady Campaign to Prevent Gun Violence—have historically been out-funded by the pro-gun NRA, which receives significant funding from gun manufacturers and is commonly acknowledged as one of the most powerful
interest groups in the United States. In 2012, the NRA spent more than $24 million on political contributions, lobbying, advertising, and other communication activities intended to influence policy outcomes. The NRA exerts direct political power over members of Congress by grading them based on their gun policy votes and by funding their (or their opponents’) campaigns. There are some signs that new interest groups supporting stronger gun policies—including a political action committee funded by Mayor Michael R. Bloomberg—may be capable of exerting their own political influence, but fear of an NRA backlash likely contributed to many politicians’ decisions to vote against strengthening gun policies.

While the NRA has proved to be extremely capable at influencing gun policy outcomes, the organization in fact represents only about 2%—the group claims 5 million members—of the U.S. population. Why does a group representing such a small subset of Americans have such outsized political influence?

In addition to substantial funding, NRA members and other pro-gun advocates tend to be more politically active, single-issue voters than the majority of Americans who support stronger gun policies, with very strong pro-gun opinions. Politically active individuals contribute money to candidates or organizations, communicate their policy preferences to elected officials, join advocacy groups, and engage in other activities that influence policy outcomes. This political participation gap provides another explanation for why policy outcomes do not always align with majority public opinion. This could change if the activism spurred by the mass shooting at Sandy Hook Elementary (e.g., the creation of Moms Demand Action, growing faith-based coalitions for stronger gun laws) can be sustained and expanded.

Despite broad public support across both political parties for policies designed to keep guns from dangerous people, gun policy remains one of the most polarizing issues in American politics. “Gun control” symbolizes, for many Americans, a threat to a broad set of conservative values related to a rural way of life, the importance of personal responsibility, and the role of government. As a result, public opinion polls asking respondents to report whether they think gun control policies should be more or less strict, or whether it is more important to “control gun ownership” or “protect the right of Americans to own guns,” likely measure a constellation of attitudes about gun ownership generally and the role of government rather than support for specific gun policies. In addition, these types of polling questions provide little useful information because it is unclear which policies respondents’ are thinking of when they answer. While some respondents
Public Opinion on Gun Policy and the Disconnect with Political Action

may answer based on their opinions about background check policies, others may answer based on their attitudes toward automatic weapons bans or a host of other policies. Another reason for the disjunction between relatively low support for “stricter gun laws” and high support for specific policies, like background checks, is that many Americans may think current laws are already stricter than they are in reality. A recent CBS News poll concluded that only 49% of Americans think gun laws should be stricter; yet the same poll—consistent with our survey results—found that 85% of Americans (84% of Republicans) support requiring background checks for all gun sales, a requirement lacking in federal gun laws and in most states’ gun laws.

Moving forward, for advocates for stronger guns laws, it will be critically important to energize and increase the political participation of the large majority of gun owners who support policies—like universal background checks—to keep guns out of the hands of dangerous people.

REFERENCES

Biographies of Contributors

Ted Alcorn, MA, MHS, is a senior policy analyst in the Office of the Mayor of New York City. He contributes frequent public health reporting to The Lancet and has also published work in the International Herald Tribune, The Financial Times, Guernica, and the American Journal of Tropical Medicine and Hygiene. He earned an MHS from the Johns Hopkins Bloomberg School of Public Health and an MA from the Johns Hopkins School for Advanced International Studies (SAIS), and then lived in Beijing, China, as a Henry Luce Scholar.

Colleen L. Barry, PhD, MPP, is an associate professor and associate chair for Research and Practice in the Department of Health Policy and Management at the Johns Hopkins Bloomberg School of Public Health. Dr. Barry’s research focuses on policy and regulation affecting often-stigmatized health conditions, with a focus on mental illness, substance use disorders, and obesity. She teaches courses in health policy and politics and public opinion research. She is principal investigator of an NIMH R01 to understand the effects of implementation of the recent federal mental health and addiction parity law and is principal investigator on a NIDA R01 to evaluate the effects of regulations aimed at increasing rates of use of new treatments for substance use disorders. Dr. Barry has been involved with a number of projects examining the implications of various aspects of the Affordable Care Act on mental illness and addiction treatment. She is also principal investigator on two Robert Wood Johnson Foundation Healthy Eating Research grants, studying how news media messages used to frame the issue of childhood obesity affect public attitudes about food-marketing regulation and testing how media messages affect public opinion about taxes on sugar-sweetened beverages. She received a PhD in Health Policy from Harvard University and an MA in public policy from the John F. Kennedy School of Government at Harvard.

Anthony A. Braga, PhD, is the Don M. Gottfredson Professor of Evidence-Based Criminology in the School of Criminal Justice at Rutgers University and a senior research fellow in the Program in Criminal Justice Policy and Management at Harvard University. He is also a member of the University of Chicago Crime Lab and a Senior Fellow in the Chief Justice Earl Warren Institute on Law and Social Policy at the University of California, Berkeley. He is currently the president and an elected fellow of the Academy of
Experimental Criminology. Dr. Braga’s research involves collaborating with criminal justice, social service, and community-based organizations to address illegal access to firearms, reduce gang and group-involved violence, and control crime hot spots. Since 1995, Braga has worked closely with criminal justice practitioners in Boston to reduce youth gun violence. He was a member of the Boston Gun Project, which implemented the Operation Ceasefire gang violence reduction strategy that was associated with a 63% reduction in youth homicides in Boston. Dr. Braga’s research has been published in top criminal justice, medical, and public health journals. He received an MPA from Harvard University and a PhD in criminal justice from Rutgers University.

Shannon Frattaroli, PhD, MPH, is an associate professor at the Johns Hopkins Bloomberg School of Public Health, where she is affiliated with the Center for Gun Policy and Research. Dr. Frattaroli’s research in the area of gun violence prevention focuses on understanding and improving how policies are implemented and enforced, with particular attention to those that aim to limit batterers’ access to guns. A common theme in her work is the role of policy makers, law enforcement, the courts, and advocates in ensuring that laws designed to prevent gun violence are realized through implementation and enforcement strategies. Dr. Frattaroli is currently serving as a member of the Maryland Task Force to Study Access of Mentally Ill Individuals to Regulated Firearms.

Peter L. Gagliardi is senior vice president for Forensic Technology Inc. He has more than 40 years of experience extracting useful investigative information from crime guns and related evidence in both the public and private sectors. He spent 30 of those years in law enforcement, most of which were focused on the investigation of firearms- and explosives-related crimes with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). In 1999, Mr. Gagliardi retired from ATF as the Special Agent in Charge of the New York Field Division. During his tenure in New York, he was responsible for managing all of ATF’s law enforcement and regulatory operations within the New York–New Jersey metropolitan area. While assigned to ATF headquarters in Washington, DC, he served as the agency’s principal liaison to Congress, the deputy assistant director of Science and Technology, the deputy assistant director of Law Enforcement Programs, and the chief of Strategic Planning. In 2010, he authored the book The 13 Critical Tasks: An Inside-Out Approach to Solving More Gun Crime, which Forensic Technology makes available at no cost to criminal justice agencies and educators. He currently serves on the Firearms Committee of the International Association of Chiefs of Police.

Emma E. McGinty, MS, is a research assistant and fourth-year PhD candidate in Health Policy and Management at the Johns Hopkins Bloomberg School of Public Health. Her research interests include mental illness, gun violence, and the role of the news media in public policy. Her dissertation research examines the effects of news media coverage of gun violence by persons with serious mental illness, the public’s support for gun control policies, and stigma toward persons with serious mental illnesses, such as schizophrenia and bipolar disorder. At the Center for Gun Policy and Research, she is collaborating on...
studies on the effects of minimum legal age restrictions for firearm purchasers and possessors on gun violence and the effects of state gun sales policies on interstate trafficking of guns. She also serves as a resource on mental illness and gun violence. Prior to coming to the Bloomberg as a Sommer Scholar in 2009, she worked for the Centers for Disease Control and Prevention. She received an MS in health and behavior science from Columbia University in 2006.

Allison G. Robertson, PhD, MPH, is an assistant professor in the Department of Psychiatry and Behavioral Sciences at Duke University School of Medicine. She received a PhD in health policy and management from the University of North Carolina, Chapel Hill, and an MPH in health management and policy from the University of Michigan at Ann Arbor. Her interests span several areas of mental health law, policy, and services research, in particular the problems of co-occurring substance abuse and the intersection between these disorders and criminal justice involvement. Dr. Robertson is currently an investigator on several projects including the multisite study on gun control laws, mental illness, and prevention of violence led by Dr. Jeffrey W. Swanson. She was principal investigator on a recent study funded by the Robert Wood Johnson Foundation Program on Public Health Law Research examining the effects of legal practices used in jail diversion programs for persons with serious mental illness which aim to improve participants’ access to treatment and reduce recidivism.

Lawrence E. Rosenthal, JD, is a professor at Chapman University School of Law in Orange, California. Previously, he was deputy corporation counsel for Counseling, Appeals and Legal Policy with the City of Chicago’s Department of Law. In this capacity, he argued three cases before the U.S. Supreme Court and supervised a large volume of complex litigation, as well as legislative and policy matters. He entered the practice of law as an assistant U.S. attorney for the Northern District of Illinois, specializing in organized crime and public corruption prosecutions. He brought the first racketeering case involving insider trading and secured the longest sentence—200 years—in the history of the District in an organized crime case. He clerked for Judge Prentice Marshall of the U.S. District Court for the Northern District of Illinois and for Justice John Paul Stevens of the U.S. Supreme Court. He graduated from Harvard Law School, where he won the Fay Diploma and was an editor of the Harvard Law Review. He continues to engage in litigation before the Supreme Court and other appellate courts, usually on a pro bono basis.

Jeffrey W. Swanson, PhD, is a professor in psychiatry and behavioral sciences at Duke University School of Medicine. He is a medical sociologist with expertise in psychiatric epidemiology, mental health services research, and mental health law and policy studies. Dr. Swanson is principal investigator of a multisite study on gun control laws, mental illness, and prevention of violence, cosponsored by the National Science Foundation and the Robert Wood Johnson Foundation’s Program on Public Health Law Research. He received the 2011 Carl Taube Award from the American Public Health Association for outstanding career contributions to mental health research.
Stephen P. Teret, JD, MPH, is a professor of health policy and director of the Johns Hopkins Center for Law and the Public’s Health. Professor Teret holds joint faculty appointments in pediatrics and in emergency medicine at the Johns Hopkins School of Medicine. He began his career working as a poverty lawyer and a trial lawyer in New York. Since 1979, he has been a full-time faculty member at the Johns Hopkins Bloomberg School of Public Health. His work includes research, teaching, and public service in the areas of injury prevention, vaccine policy, tobacco policy, food policy, preparedness, and, generally, public health law. Professor Teret’s work has also focused on the understanding and prevention of violence, with an emphasis on gun policy. Teret is recognized as one of the first persons to write about and advocate for the use of litigation as a tool for protecting the public’s health. He is a frequent lecturer at major universities and has served as a consultant to the president, the U.S. attorney general, the U.S. Congress, federal agencies, state legislatures, and health departments. Professor Teret is the recipient of distinguished career awards from the American Public Health Association and the Association of Trial Lawyers of America.

Jon S. Vernick, JD, MPH, is an associate professor and associate chair in health policy and management at the Johns Hopkins Bloomberg School of Public Health. He is co-director of the Johns Hopkins Center for Gun Policy and Research. In addition, Vernick is co-director of the Johns Hopkins Center for Law and the Public’s Health and deputy director of the Center for Injury Research and Policy. His work has concentrated on ways in which the law and legal interventions can improve the public’s health. He is particularly interested in epidemiology, policy, legal, and ethical issues associated with firearm and motor vehicle injuries. He has also examined aspects of numerous other public health issues including tobacco control, preparedness, and health advocacy. Vernick is also committed to graduate education, serving as an associate chair of the Johns Hopkins MPH Program. He received a BA from Johns Hopkins University, a law degree cum laude from George Washington University, and an MPH from the Johns Hopkins School of Hygiene and Public Health.

Daniel W. Webster, ScD, MPH, is a professor in health policy and management at the Johns Hopkins Bloomberg School of Public Health. He serves as director of the Johns Hopkins Center for Gun Policy and Research as well as deputy director of research for the Center for the Prevention of Youth Violence. He is also affiliated with the Johns Hopkins Center for Injury Research and Policy. Webster is the author of numerous articles on the prevention of gun violence and firearm policy. His current research interests include evaluating the effects of various efforts to reduce violence, including state gun and alcohol policies, policing strategies focused on deterring gun violence, a community gun violence prevention initiative (Safe Streets) and Maryland’s Lethality Assessment Program for reducing the recurrence of intimate partner violence.

Adam Winkler, JD, MA, is a law professor at the University of California, Los Angeles. He is a specialist in American constitutional law, known primarily for his research on the right to bear arms and on corporate political speech. His work has been cited by the U.S. Supreme Court and numerous federal and state courts. His recent book, Gunfight: The
Battle over the Right to Bear Arms, was called “provocative” and “illuminating” by The New York Times; “a fascinating survey of the misunderstood history of guns and gun control in America” by The Wall Street Journal; and “an antidote to so much in the gun debate that is one-sided and dishonest” by the Los Angeles Times. A contributor to The Daily Beast and The Huffington Post, his commentary has been featured on NBC Nightly News, CNN, The New York Times, The Wall Street Journal, Newsweek, The Atlantic, The New Republic, and SCOTUSblog. He edited, along with Pulitzer Prizing–winning historian Leonard Levy, the Encyclopedia of the American Constitution. He is a graduate of the Georgetown University School of Foreign Service and New York University School of Law. He also holds an MA in political science from the University of California at Los Angeles.

Garen J. Wintemute, MD, MPH, is the inaugural Susan P. Baker–Stephen P. Teret Chair in Violence Prevention and director of the Violence Prevention Research Program at the University of California, Davis. He practices and teaches emergency medicine at UC Davis Medical Center, Sacramento (a level I regional trauma center) and is a professor of emergency medicine at the UC Davis School of Medicine. Dr. Wintemute’s research focuses on the nature and prevention of violence and on the development of effective violence prevention measures and policies. Selected studies include assessments of risk for criminal activity and violent death among legal purchasers of handguns, evaluations of the effectiveness of denying handgun purchase to felons and violent misdemeanants, in-depth studies of gun dealers who are disproportionate sources of crime guns, and the first empirical study of gun shows. He is the author of two books: Ring of Fire (1994), a study of the handgun makers of Southern California, and Inside Gun Shows: What Goes on When Everybody Thinks Nobody’s Watching (2009). He has testified before committees of Congress and state and local legislatures as an expert on firearm violence and its prevention. In 1997 he was named a Hero of Medicine by Time magazine.

April M. Zeoli, PhD, MPH, is an assistant professor in the School of Criminal Justice at Michigan State University. In her research, she uses public health methods and models to increase the understanding of violence and homicide. Her main field of investigation is the prevention of intimate partner violence and homicide through public health policy.
Visit http://www.press.jhu.edu/ for more information and to purchase the complete book.

http://jhupbooks.press.jhu.edu/ecom/MasterServlet/GetItemDetailsHandler?iN=9781421411101&qty=1&source=2&viewMode=3&loggedIn=false&JavaScript=y

Edited by Daniel W. Webster, ScD, MPH, and Jon S. Vernick, JD, MPH
Center for Gun Policy and Research
Johns Hopkins Bloomberg School of Public Health

Foreword
Michael R. Bloomberg

Preface
Ronald J. Daniels and Michael J. Klag

Acknowledgments

Introduction
Daniel W. Webster and Jon S. Vernick

PART I: GUN POLICY LESSONS FROM THE UNITED STATES: KEEPING GUNS FROM HIGH-RISK INDIVIDUALS

1 Firearms and Violent Death in the United States
Matthew Miller, Deborah Azrael, and David Hemenway

2 The Limited Impact of the Brady Act: Evaluation and Implications
Philip J. Cook and Jens Ludwig

3 Preventing Gun Violence Involving People with Serious Mental Illness
Jeffrey W. Swanson, Allison Gilbert Robertson, Linda K. Frisman, Michael A. Norko, Hsiu-Ju Lin, Marvin S. Swartz, and Philip J. Cook
Evidence for Optimism: Policies to Limit Batterers’ Access to Guns
April M. Zeoli and Shannon Frattaroli

Reconsidering the Adequacy of Current Conditions on Legal Firearm Ownership
Katherine A. Vittes, Daniel W. Webster, and Jon S. Vernick

Broadening Denial Criteria for the Purchase and Possession of Firearms: Need, Feasibility, and Effectiveness
Garen J. Wintemute

Comprehensive Background Checks for Firearm Sales: Evidence from Gun Shows
Garen J. Wintemute

Preventing the Diversion of Guns to Criminals through Effective Firearm Sales Laws
Daniel W. Webster, Jon S. Vernick, Emma E. McGinty, and Ted Alcorn

Spurring Responsible Firearms Sales Practices through Litigation: The Impact of New York City’s Lawsuits against Gun Dealers on Interstate Gun Trafficking
Daniel W. Webster and Jon S. Vernick

Curtailing Dangerous Sales Practices by Licensed Firearm Dealers: Legal Opportunities and Obstacles
Jon S. Vernick and Daniel W. Webster

PART II. MAKING GUN LAWS ENFORCEABLE

Enforcing Federal Laws against Firearms Traffickers: Raising Operational Effectiveness by Lowering Enforcement Obstacles
Anthony A. Braga and Peter L. Gagliardi

PART III. GUN POLICY LESSONS FROM THE UNITED STATES: HIGH-RISK GUNS

America’s Experience with the Federal Assault Weapons Ban, 1994–2004: Key Findings and Implications
Christopher S. Koper
13 Personalized Guns: Using Technology to Save Lives
Stephen P. Teret and Adam D. Mernit

PART IV. INTERNATIONAL CASE STUDIES
OF RESPONSES TO GUN VIOLENCE

14 Gun Control in Great Britain after the Dunblane Shootings
Michael J. North

15 Rational Firearm Regulation: Evidence-based Gun Laws in Australia
Rebecca Peters

16 The Big Melt: How One Democracy Changed after Scrapping a Third of Its Firearms
Philip Alpers

17 Brazil: Gun Control and Homicide Reduction
Antonio Rangel Bandeira

PART V. SECOND AMENDMENT

18 The Scope of Regulatory Authority under the Second Amendment
Lawrence E. Rosenthal and Adam Winkler

PART VI. PUBLIC OPINION ON GUN POLICY

19 Public Opinion on Proposals to Strengthen U.S. Gun Laws: Findings from a 2013 Survey
Emma E. McGinty, Daniel W. Webster, Jon S. Vernick, and Colleen L. Barry

Consensus Recommendations for Reforms to Federal Gun Policies

Biographies of Contributors
Index
Availability of Litigation as a Public Health Tool for Firearm Injury Prevention: Comparison of Guns, Vaccines, and Motor Vehicles

Jon S. Vernick, JD, MPH, Lainie Rutkow, JD, MPH, and Daniel A. Salmon, PhD, MPH

The Protection of Lawful Commerce in Arms Act (PLCAA), enacted in 2005, grants the firearm industry broad immunity from liability. The PLCAA not only prevents most people from receiving compensation for their firearm-related injuries, it erodes litigation’s ability to serve its public health role of providing manufacturers with a financial incentive to make their products safer.

When the viability of the vaccine industry was threatened in the 1980s, Congress provided limited protection from liability and also established the Vaccine Injury Compensation Program. The liability of nearly all other products, for example motor vehicles, is governed by traditional common law principles.


On October 26, 2005, President Bush signed a new law, the Protection of Lawful Commerce in Arms Act (PLCAA), with important implications for public health. Under the PLCAA, many people injured by firearms and ammunition will not be able to hold makers or sellers of these products accountable in court for their injuries. Instead, the PLCAA grants firearm makers and dealers broad immunity from liability. Because litigation can help to prevent some deaths and injuries, a valuable tool to respond to the public health problem of firearm-related violence in the United States has been seriously eroded.

In the United States, when someone is harmed by a consumer product, that person can generally seek compensation for his or her injury or illness through the courts. In court, the person who has been harmed—the plaintiff—may argue that the product’s manufacturer, distributor, or retailer—the defendant—should be financially responsible for any damages sustained. Liability for those damages might be premised on some product defect, failure to make the product reasonably safe for its users, or failure to warn users about foreseeable risks associated with the product. For each of these theories of liability, the plaintiff must prove that the defendant’s conduct was a proximate cause of the harm sustained.
example, in a case based on an allegation that a product could have been designed more safely, the plaintiff generally must convince a finder of fact (usually a jury) that he or she would not have been harmed (or would have been harmed less seriously) had the manufacturer altered the product design.

From an individual perspective, this kind of lawsuit can compensate the plaintiff for costs such as medical care, rehabilitation, lost wages, and pain. Perhaps even more importantly, from a public health perspective, tort liability can provide manufacturers and others with a powerful financial incentive to voluntarily reduce risks associated with their products. Rather than pay damages to those injured by the product, a manufacturer can choose to prevent such injuries by designing the product to make it safer. The litigation process can also require defendants to produce documents or other materials regarding risks associated with the product. In addition to providing information for litigants and regulators, substantial negative publicity may be associated with document disclosures.

Although not all manufacturers will respond to these incentives in positive ways, there is evidence that litigation encourages manufacturers to improve product safety. Famous lawsuits regarding fuel tank fires in the Ford Pinto encouraged Ford to recall and modify its vehicle. More generally, in one survey of manufacturers, nearly half reported safety improvements associated with liability.

**Comparision of Liability**

Firearms, vaccines, and motor vehicles are all products that have the potential to provide both public health benefits and harms. Firearms can be used by law enforcement officers and others to save lives, yet guns are associated with about 30,000 deaths and 65,000 nonfatal injuries in the United States annually. Vaccines have been one of the most important achievements in medicine and public health during the past century, yet vaccines are not 100% safe and have been associated with disease or other adverse events. Motor vehicles are a ubiquitous part of life in the United States, providing numerous societal benefits. Although there have been dramatic declines in fatality rates since the 1960s, approximately 2.8 million people were injured in motor vehicle crashes in 2004 and 42,836 were killed. Although each is a consumer product, when a person is injured or killed by one of these 3 products, US law offers the victim very different legal options (Table 1).

**Firearms and the Protection of Lawful Commerce in Arms Act**

Firearm violence is a public health problem with numerous risk factors; therefore, many different interventions have been implemented. One component of the multironged strategy has been litigation against individual firearm manufacturers or sellers and lawsuits against the entire industry. In these lawsuits, plaintiffs have argued that firearm manufacturers failed to employ safety technology that might have prevented some deaths or injuries, or failed to warn of known dangers. Plaintiffs have also argued that firearm manufacturers marketed their products without safeguards to make it less likely that guns would be transferred to criminals. One set of lawsuits, modeled after litigation against the tobacco industry, has involved US cities and states suing the firearm industry. As in the tobacco litigation, these lawsuits sought recovery of firearm-related costs borne by the municipalities.

Prior to the PLCAA, these lawsuits produced mixed results. Courts dismissed many of the municipal lawsuits, reasoning that firearm manufacturers should not be liable for the acts of criminals. Some courts also concluded that costs borne by municipalities were too remote from the industry’s allegedly wrongful acts. Other courts, however, allowed certain lawsuits to continue, concluding that a jury might reasonably find that the industry could have altered its products or conduct to prevent some deaths.

Although these cases were small in number, there is some evidence that the lawsuits influenced the firearm industry’s conduct. For example, after being sued, Smith & Wesson initially concluded that evidence that the lawsuits influenced the firearm industry’s conduct. For example, after being sued, Smith & Wesson initially agreed to change some of its products and marketing practices. Following a large monetary verdict, the manufacturer of the rifle used in a series of Washington, DC–area shootings...
**TABLE 1—Comparison of Federal Law Governing Litigation for 3 Products Affecting the Public’s Health**

<table>
<thead>
<tr>
<th>Governing federal liability law</th>
<th>Protection of Lawful Commerce in Arms Act</th>
<th>National Childhood Vaccine Injury Act</th>
<th>Common Law Liability</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lawsuits freely permitted by federal law</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Compensation mechanism for injuries</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Plaintiff can pursue claim in court</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Punitive damages available</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Pending lawsuits preserved when federal law enacted</td>
<td>No</td>
<td>Yes</td>
<td>NA</td>
</tr>
<tr>
<td>Federal law governs safety of the product</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>

Note. NA = not applicable.

<table>
<thead>
<tr>
<th>Governing federal liability law</th>
<th>Protection of Lawful Commerce in Arms Act</th>
<th>National Childhood Vaccine Injury Act</th>
<th>Common Law Liability</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lawsuits freely permitted by federal law</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Compensation mechanism for injuries</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Plaintiff can pursue claim in court</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Punitive damages available</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Pending lawsuits preserved when federal law enacted</td>
<td>No</td>
<td>Yes</td>
<td>NA</td>
</tr>
<tr>
<td>Federal law governs safety of the product</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>


**Text:**

altered some of its business practices. Several gun dealers have also changed their sales policies as a result of litigation. With the enactment of the PLCAA, however, the potential for future lawsuits to foster change in the industry is dramatically reduced.

The PLCAA outlaws many different kinds of lawsuits against the firearm industry. Under the act, lawsuits against firearm manufacturers or sellers “resulting from the criminal or unlawful misuse of a qualified product by the person or a third party” may not be brought in federal or state court.

A “qualified product” is defined broadly to include firearms, their parts, and ammunition. Even lawsuits pending at the time of the PLCAA’s enactment “shall be immediately dismissed.”

At first, it might appear that the PLCAA prohibits only lawsuits where harm was caused during the commission of what are commonly considered “crimes.” But this language may apply to a wide variety of possible lawsuits. For example, several lawsuits have been brought after a child found the parents’ or a neighbor’s firearm and used it to harm himself or herself or someone else. These lawsuits have argued that the firearm manufacturer could have designed the gun so that a child could not operate it, or that the gun should have included other safety devices. Under the PLCAA, such lawsuits might be dismissed because a child’s use of the firearm, or the parents’ failure to lock it up, could be deemed an “unlawful” use under state or federal law.

Similarly, municipal lawsuits have argued that firearm manufacturers inadequately supervised their dealers and would even “oversupply” guns in certain places, knowing that they were providing more guns than the lawful market could support. Plaintiffs have argued that this lack of oversight, coupled with oversupply, made it easier for criminals to obtain guns that were then used to harm residents of the municipality. The lawsuits sought to recover some of the costs borne by the municipalities for these deaths and injuries, and to protect residents from future harm. Under the PLCAA, many of these lawsuits have also been dismissed, even if the city or state did not seek monetary damages but instead sought to enjoin potentially damaging conduct by manufacturers or dealers. The act also prohibits punitive damages designed to punish especially egregious conduct by a defendant.

The PLCAA does contain exceptions that allow certain lawsuits to proceed. The exceptions, however, are generally narrow in scope. Lawsuits in which dealers “knowingly” violate the laws governing firearm sales or breach their sales contracts with a buyer are permitted. An exception also allows certain lawsuits stemming from design defects in firearms, such as the failure to include safety devices. For this exception to apply, however, the firearm must have been “used as intended or in a reasonably foreseeable manner,” and the shooting must not have been caused by a “volitional act that constituted a criminal offense.” Unfortunately, some injuries that might be prevented by safer designs—as an accidental shooting by a child—are caused by acts that technically may be criminal offenses. Firearm makers may also argue that an accidental shooting by a child does not involve an “intended” or “foreseeable” use. Other types of lawsuits based on design or manufacturing defects may remain viable, however, if they do not involve a potentially criminal offense (e.g., a lawful owner of the firearm who shoots himself because the firearm malfunctions). Ironically, it may require future litigation to determine the precise scope of immunity in this area.
Under the PLCAA, only a few municipal lawsuits remain pending. New York City argued that its lawsuit was based on a knowing violation by manufacturers and dealers of the state’s law against “public nuisances,” and thus fit one of the act’s few exceptions. It also argued that the PLCAA itself was unconstitutional. Although this view was not shared by the PLCAA’s framers,27 the only court to conclude that the PLCAA was unconstitutional,28 the city of Gary’s lawsuit, becoming the first, has been stayed pending an appeal.26

The PLCAA was enacted after intense lobbying pressure from the National Rifle Association and the firearm industry.28 Proponents of the act argued that the lawsuits against the firearm industry were an “abuse of the legal system,” attempting to hold the industry responsible for what they described as the criminal acts of others. But as we have seen, the PLCAA is not limited to what are commonly considered “crimes.” Proponents also argued that the lawsuits were an inappropriate “attempt to use the Judicial branch to circumvent the Legislative branch of government.”29

They asserted that the lawsuits attempted to accomplish through litigation what could not be achieved legislatively. In addition, supporters claimed that the PLCAA is needed to ensure the survival of the firearms industry. They asserted that a healthy firearm industry is vital to our national security, and even that national security could be threatened if a ready supply of firearms were not available for the police and the military.29

Of course, the same might be said of many other industries. One might debate whether the firearms industry merits protection based on societal risk and benefits, especially compared with other industries such as vaccines. From a financial perspective, however, there is simply no evidence that recent lawsuits were poised to eliminate the US firearm industry. In addition, unlike the case with virtually every other consumer product in the United States, no federal agency has the authority to regulate the safe design of firearms. In fact, the Consumer Product Safety Commission—the federal agency charged with overseeing the safety of most of the nation’s household products— is expressly forbidden from regulating firearms or ammunition.30

Even if one believed it were necessary to protect the firearm industry from litigation, there are other mechanisms, such as broad immunity, that could be considered. In the workplace, for example, employers generally enjoy protection from tort liability for most on-the-job injuries, but state workers’ compensation systems provides an alternative remedy for injured workers.31 In the product area, the system for childhood vaccines is a useful model.

Vaccines and the National Childhood Vaccine Injury Act

In the early 1980s, following reports of harmful side effects after administration of the DTwP (diphtheria, tetanus, whole-cell pertussis) vaccine, numerous lawsuits were filed against vaccine manufacturers. This litigation led to concerns about the continued viability of the US vaccine industry.32–34

In response, Congress enacted the National Childhood Vaccine Injury Act of 1986.35 Among its provisions, the act, §155(§300aa-2[b]), established the National Vaccine Injury Compensation Program (VICP).36 With the VICP, Congress fashioned a no-fault system to benefit people who suffer vaccine-related injuries. “No fault” means that compensation is provided without the need to show that a wrong was committed.

Instead, to be eligible for compensation, a vaccine-related injury or death ordinarily must occur after the administration of a vaccine listed on a Vaccine Injury Table created by the law. §14(§300aa-21[e][1](c)) In addition, the petitioner must have suffered an injury listed on the table within a prescribed time frame. For example, to qualify for compensation following a tetanus vaccination, the injury (e.g., anaphylactic shock) must be recognized in the table and have occurred within 4 hours after the vaccine’s administration. §155(§300aa-16[a]) Anyone wishing to receive compensation through the VICP for an injury not listed on the Vaccine Injury Table, or falling outside of the table’s time frame, must demonstrate that the vaccine in question caused the injury. §155(§300aa-11[h][1][i][b][3]7

People who believe they are eligible for compensation through the VICP must first file a petition with the US Court of Federal Claims. §155(§300aa-21[a]) The Department of Health and Human Services reviews the petition to determine whether the person is eligible to receive compensation, and an attorney appointed by the court then determines the amount, if any, to which the person is entitled. §155(§300aa-21[e][2]) Anyone unhappy with the determination can choose to appeal the decision in federal court. Alternatively, anyone disputing the amount of compensation, or found ineligible for compensation, can leave the VICP system and bring a lawsuit in state or federal court against the vaccine manufacturer, administrator, or both. §155(§300aa-11[a][2]) Lawsuits may also be brought for vaccines not covered by the VICP.

The VICP also places limitations on the theories of liability that can be used if a plaintiff exits the VICP system and pursues compensation through the courts. A vaccine manufacturer cannot be held liable “if the injury or death resulted from side-effects of the vaccination, from any other cause, or from any cause that is not the proximate cause of the injury or death.” §155(§300aa-11[e])
effects that were unavoidable even though the vaccine was properly prepared and was accompanied by proper directions and warnings.38

A vaccine is presumed to have been "accompanied by proper directions and warnings"35[§300aa-22b][2] if the manufacturer complied with all requirements of the Federal Food, Drug, and Cosmetic Act. Unlike the situation with the PLCAA and firearms, however, injured people retain their day in court and have the opportunity to show that a vaccine maker failed to act responsibly. Also, unlike the PLCA, upon its creation, the VICP did not automatically dismiss pending litigation.35[§300aa-15][d],39 and, of course, the overall safe design of vaccines remains within the jurisdiction of the Food and Drug Administration.

Under the VICP, several types of compensation are available.38 Compensation can include medical expenses, loss of earning capacity, up to $250,000 for pain and suffering, and attorney’s fees.35[§300aa-15][1][4], aa-15[d] Punitive damages are generally prohibited.35[§300aa-15][d];39

Motor Vehicles and Common Law Liability

Unlike lawsuits involving firearms or vaccines—but like those involving most other products—lawsuits against motor vehicle manufacturers for injuries sustained in crashes are largely governed by traditional common law rules of liability. Common law refers to the body of prior judicial decisions or precedents that judges rely on in deciding present cases.

One of the most basic and widespread forms of common law liability is called negligence. In a lawsuit based on negligence, the plaintiff must prove that the defendant failed to adhere to some standard of care that the law recognizes, and that this failure was a legal cause of the plaintiff’s injuries.2 In a lawsuit against a motor vehicle manufacturer, the usual standard of care is the manufacturer’s obligation to make its products reasonably safe for intended and foreseeable uses.40

As early as 1916, courts recognized that motor vehicle manufacturers have a duty to avoid defective designs or materials that might foreseeably lead to a crash.41 Beginning in the 1960s, courts extended this rule to failure to include safety devices that might minimize the risk or severity of injury when a crash occurs. In Larsen v General Motors, a federal appellate court applied this doctrine of “crashworthiness” to injuries caused when the steering column of a 1963 Chevrolet Corvair moved rearward during a crash, striking the driver’s head. In ruling for the plaintiff, the court concluded that “an automobile manufacturer is under no duty to design an accident-proof or fool-proof vehicle . . . but such manufacturer is under a duty to use reasonable care in the design of its vehicle to avoid subjecting the user to an unreasonable risk of injury in the event of a collision.”42

At about the same time as the Larsen decision, Congress enacted the National Traffic and Motor Vehicle Safety Act of 1966.43 That act and its successors created the National Highway Traffic Safety Administration (NHTSA), which has the power to promulgate safety standards for automobiles. Today, there are many such standards, including those that require seat belts, air bags, and conspicuous brake lights.44 Importantly, these are seen as minimum safety standards, establishing a floor but not a ceiling for vehicle safety.

In fact, motor vehicle manufacturers routinely provide greater safety than the standards require. The threat of lawsuits provides one incentive for manufacturers to exceed safety standards. For example, before air bags were required, numerous lawsuits were filed by people injured in crashes of cars without air bags. Plaintiffs argued that their injuries would have been less severe had the car been equipped with air bags. Rather than risk future liability verdicts, some manufacturers began to voluntarily provide air bags in cars. This made it easier for Congress and the NHTSA to ultimately require air bags in all passenger cars. More recently, litigation against Ford and Bridgestone/Firestone regarding the Ford Explorer prompted a massive recall and new tire safety legislation.7

Some have criticized the traditional liability system, exemplified by motor vehicles and many other products, as unfair to manufacturers and costly for consumers. Certainly, manufacturers pass some of the associated costs of liability on to consumers. Since the 1960s, however, there has been an impressive reduction in the number of deaths from motor vehicle crashes in the United States. From 1966 to 2004, the rate of such deaths per million miles traveled declined by 74%.45

DISCUSSION

As a society, we make decisions about how to balance the risks and benefits of consumer products. One way we strike that balance is by allowing litigation against product makers when risks become too great. In this way, litigation can act as a public health feedback mechanism to affect manufacturers’ safety practices. If a product is considered unsafe (or society less willing to accept certain risks), more litigation may follow. As manufacturers respond, products can become safer, the likelihood of successful litigation is reduced, and fewer lawsuits (and injuries) will result.

The PLCAA is a radical departure from this time-honored approach. It simply eliminates litigation’s feedback mechanism without providing an alternative means to ensure the safe design and distribution of firearms and compensate injured victims. Worse still, unlike for vaccines and motor vehicles, no regulatory system guarantees even minimum standards for the safe design of firearms. It is therefore especially ironic that a product like firearms, rather than vaccines or cars, is afforded broad immunity. Firearms are sometimes used for...
beneficial purposes, but compared with vaccines, whose sole purpose is to prevent death or illness, firearms also impose negative societal and public health consequences.

Several other industries with implications for public health—notably fast food—also have recently sought immunity from liability. At least 20 states have enacted so-called “cheesburger” bills intended to insulate fast-food restaurants and food manufacturers from lawsuits in which individuals claim that certain foods caused their obesity.46,47

Most industries, however, have responded to the threat of litigation by modifying their products or changing their sales practices and passing some of the costs on to consumers. This would be an especially appropriate response for firearm makers, because there is no evidence that litigation has bankrupted the industry. Litigation regarding firearms should therefore be treated just like litigation for nearly all other consumer products. If, in the future, the industry is actually in jeopardy, Congress could choose to provide a more limited form of protection analogous to the protection afforded to vaccines (with or without an alternative compensation mechanism). Because most lawsuits were dismissed by the PLCAA or the courts before they came to trial, we cannot know precisely how these lawsuits would have affected the firearm industry’s conduct or whether rates of firearm-related death and injury would ultimately have been reduced. But under the PLCAA, the lack of both regulation and litigation as public health tools for firearm injury prevention is a potentially dangerous combination for the public’s health.

About the Authors

Jon S. Vernick is with the Bloomberg School of Public Health and the Center for Gun Policy and Research, Johns Hopkins University, Baltimore, Md. Lainie Ruthok is with the Bloomberg School of Public Health, Johns Hopkins University, Baltimore. At the time of this study, Daniel A. Salmon was with the Department of Epidemiology and Health Policy Research, College of Medicine, University of Florida, Gainesville.

Requests for reprints should be sent to Jon S. Vernick, JD, MPH, The Johns Hopkins Bloomberg School of Public Health, 624 N Broadway, Baltimore, MD 21205 (e-mail: vernick@jhsph.edu).

This article was accepted October 28, 2006.

Contributors

J.S. Vernick performed legal and policy research and wrote the initial draft of the article. L. Ruthok performed legal and policy research, particularly regarding vaccines and the law, and wrote relevant portions of the article. D.A. Salmon provided vaccine policy information and helped to draft that portion of the article. All authors provided editorial and analytic suggestions for the final article.

Acknowledgments

The research upon which this article was based received financial support from the David Bohnett Foundation and the Joyce Foundation.

References


27. City of Gary v Smith & Wesson et al, Cause No. 45D05-005-CT243 (Lake Superior Court, Indiana, Civ Div Octo- ber 23, 2006).


41. MacPherson v Buick, 111 NE 1050 (NY 1916).

42. Larsen v General Motors, 391 F2d 495 (8th Cir 1968).


44. 49 CFR 571 et seq. (2005).


ACKNOWLEDGEMENTS

The Brady Center to Prevent Gun Violence is a national non-profit organization working to reduce the tragic toll of gun violence in America through education, research, and legal advocacy. Through its project Gun Industry Watch, the Brady Center works to monitor and publicly expose gun industry practices that contribute to gun violence, with the goal of bringing about life-saving industry reform. The programs of the Brady Center complement the legislative and grassroots mobilization efforts of its sister organization, the Brady Campaign to Prevent Gun Violence and its network of Million Mom March Chapters.

Shady Dealings: Illegal Gun Trafficking From Licensed Gun Dealers, was written by Brian J. Siebel and Elizabeth S. Haile. Thanks go to Dennis A. Henigan, Daniel R. Vice, Doug Pennington, and Sally Walker for their assistance in preparing this report. Thanks also goes to The Focal Point, LLC, for its donation of the graphic depicting ATF Crime Gun Traces by city.

If you have questions about any part of this report, or would like a copy, please write to Gun Industry Watch, Brady Center to Prevent Gun Violence, 1225 Eye Street, N.W., Washington D.C. 20005. The report is also available at www.bradycenter.org/gunindustrywatch and www.gunlawsuits.org.

A NOTE ABOUT THE COVER

The photographs on the cover are part of a video taken during an undercover “sting” at a gun dealership in Wayne County, Michigan. The gun-store clerk actually made the quoted statements, one after the other, to two undercover officers, one of whom had told him he wanted to purchase a handgun but had a felony record. The clerk then sold the straw purchasing team a handgun and two boxes of ammunition. This video footage was later shown on NBC’s Dateline. It can be seen at http://www.bradycampaign.org/action/trafficking/.

Copyright © 2007 by Brady Center to Prevent Gun Violence
No part of this publication may be reproduced without prior permission.
TABLE OF CONTENTS

Executive Summary 1

Part One -- Violent Crime is Fueled by the Steady Flow of Illegal Guns From Licensed Gun Dealers 5

- Criminals Want, and Get, New Guns From Gun Dealers 6
- Gun Dealers Are the Prime Source For Illegal Guns 7
- A Small Number of Gun Dealers Supply Most Crime Guns 9

Part Two -- It Takes Two to Tango 11

- Videotaped Dealer Stings Illustrate Crime Gun Diversion 12
- Licensed Dealers Supply Gun Traffickers In Many Ways 13
  - Large-volume sales 14
  - Repeat customers 15
  - In-store straw purchasing teams 17
  - Multiple copies of the same model gun 18
  - Dealer sales to traffickers at gun shows 20

Part Three -- Flaws in the Laws 23

- ATF Cannot Adequately Inspect Dealers 24
- ATF Faces a High Burden of Proof to Bring Legal Action 24
- Serious Recordkeeping Violations Are Merely Misdemeanors 25
- ATF Has Limited Remedies Other Than Revocation or Prosecution 25
- ATF is Understaffed 26
- Multiple Handgun Sales Are Not Illegal Per Se 26
- Current Law Hides Corrupt Dealers 27
- Brady Background Check Records Are Being Destroyed 28

Part Four -- What Should Be Done? 29

- Strengthen ATF’s Enforcement Powers 29
  - Remove limits on ATF’s power to inspect gun dealers 30
  - Reduce the burden on ATF necessary to revoke the licenses of corrupt dealers 30
  - Increase the penalty for violations of firearm recordkeeping laws 30
  - Give ATF new authority to fine and suspend dealers 31
  - Increase ATF staffing 31
- Bar Large-Volume Sales 31
- Give Law Enforcement and the Public Access to Crime Gun Data 32
- Retain Brady Background Check Records 32

Conclusion 34
Case Summaries 35

Large-Volume Sales 36

- Charles Brown, Dayton, Ohio 36
- Peddler’s Post, Wilmington, Ohio 37
- Windy City Pawn Brokers, Phoenix, Arizona 38
- Fryeburg Arms, Fryeburg, Maine 39

Repeat Customers 40

- Costello’s Gun Shop, Inc., North College Hill, Ohio 40
- Sauers Trading, Williamsport, Pennsylvania 41
- Jo Jo’s Gun and Pawn, Birmingham, Alabama 42
- Peddler’s Post, Wilmington, Ohio 42
- D&R Arms, Portsmouth, Virginia 43
- Army & Navy Store, Whitehall, Pennsylvania 44
- Delia’s Gun Shop, Philadelphia, Pennsylvania 44
- Shoot Straight/Weapons Unlimited, Apopka, Florida 45
- Longhorn Trading Company, Bullhead City, Arizona 45

In-Store Straw Purchasing Teams 46

- Eagle Station, Inc., Fort Valley, Georgia 46
- Abington Gun Sports, Willow Grove, Pennsylvania 47
- C&C Sports Center, Philadelphia, Pennsylvania 48
- Don’s Guns and Galleries, Inc., Indianapolis, Indiana 48
- Army & Navy Store, Whitehall, Pennsylvania 49
- A.F. Boyer Hardware, Slatington, Pennsylvania 49
- Eagle Arms Sport Shop, Breinigsville, Pennsylvania 49
- PLEOA Firing Line, Whitehall, Pennsylvania 49

Multiple Copies of the Same Model Gun 50

- Green Country Arms and Pawn, Tulsa, Oklahoma 50
- Delia’s Gun Shop, Philadelphia, Pennsylvania 51
- RJ’s Guns, Broken Arrow, Oklahoma 52
- W.D. Guns, Alva, Oklahoma 52

Dealer Sales to Traffickers at Gun Shows 54

- Gallipolis Gun & Archery Shop, Dayton, Ohio 54
- Classic Pawn and Jewelry, Inc., Chickamauga, Georgia 55

End Notes 56
Violent gun crime is an extremely serious problem in America. From 1996 through 2005, there were almost 5 million violent crimes committed with firearms in this country. That averages out to about 136 violent gun crimes every day. Moreover, the number of people victimized by violent gun crimes is significantly higher because many gun crimes harm multiple victims. More than 5.86 million people were victimized by gun violence from 1996 through 2005. For comparison, that is approximately the estimated population of the State of Tennessee, and more than the number of people living in Missouri, Arizona, Maryland, Wisconsin, or Minnesota.

Violent gun crime has also increased dramatically over the last couple of years. From 2004 to 2005, violent gun crime increased an alarming 49.4 percent. This was part of the “largest single year percent increase in violent crime in 14 years.” Unfortunately, this sharp upward trend appears to have continued in 2006, according to a report issued by the Police Executive Research Forum, and preliminary data from the FBI. It reverses what had been a very promising downward trend that took hold after enactment of the Brady Law requiring background checks on gun sales, a tightening of licensing requirements that significantly reduced the number of gun dealers, and numerous gun interdiction initiatives launched by the Clinton administration, including an initiative to comprehensively trace crime guns. Under the Bush administration, many of these initiatives have been abandoned.

**VIOLENT CRIME IS FUELED BY THE STEADY FLOW OF ILLEGAL GUNS FROM LICENSED GUN DEALERS**

“The most important ‘single source of firearms for the illegal market is still illegal traffickers who are acquiring firearms from retail outlets.’”

Joseph J. Vince Jr., former Chief of ATF’s Crime Gun Analysis Branch

The most important ‘single source of firearms for the illegal market is still illegal traffickers who are acquiring firearms from retail outlets.’

Joseph J. Vince Jr., former Chief of ATF’s Crime Gun Analysis Branch

**V**olent gun crime is an extremely serious problem in America. *From 1996 through 2005, there were almost 5 million violent crimes committed with firearms in this country.* That averages out to about 136 violent gun crimes every day. Moreover, the number of people victimized by violent gun crimes is significantly higher because many gun crimes harm multiple victims. *More than 5.86 million people were victimized by gun violence from 1996 through 2005.* For comparison, that is approximately the estimated population of the State of Tennessee, and more than the number of people living in Missouri, Arizona, Maryland, Wisconsin, or Minnesota.

Violent gun crime has also increased dramatically over the last couple of years. *From 2004 to 2005, violent gun crime increased an alarming 49.4 percent.* This was part of the “largest single year percent increase in violent crime in 14 years.” Unfortunately, this sharp upward trend appears to have continued in 2006, according to a report issued by the Police Executive Research Forum, and preliminary data from the FBI. It reverses what had been a very promising downward trend that took hold after enactment of the Brady Law requiring background checks on gun sales, a tightening of licensing requirements that significantly reduced the number of gun dealers, and numerous gun interdiction initiatives launched by the Clinton administration, including an initiative to comprehensively trace crime guns. Under the Bush administration, many of these initiatives have been abandoned.
The growing problem of violent gun crime has been fueled by a steady supply of guns into the illegal market. According to ATF, “[g]un traffickers play a critical and deadly role in the chain of violence.”13 They have certainly funneled huge numbers of guns into the hands of criminals in recent years. More than two million crime guns have been seized by local law enforcement and traced by ATF over the last 10 years.14 Even this huge number significantly undercounts the number of crime guns used nationwide, as not all law enforcement agencies trace all of the crime guns they seize each year, and not all crime guns are recovered. ATF has reported that about 30 percent of crime guns were recovered and traced by law enforcement within three years of their retail sale, a short “time to crime” that ATF regards as a strong indicator that the guns were illegally trafficked.15

Criminals Want, and Get, New Guns From Gun Dealers

Where do these vast numbers of illegal guns come from? The Director of ATF has pointed out that, “[u]nlike narcotics or other contraband, the criminals’ supply of guns does not begin in clandestine factories or with illegal smuggling.”16 Instead, virtually every gun used in crime started out in the legal market, identified by a serial number and sold by a gun dealer licensed by the Federal government.17 Moreover, crime guns comprise a significant share of the legal market. An estimated 15 percent of the 2.1 million handguns produced in America in 1995 were used in a violent crime by the end of 2000.18 This cycle repeats itself year after year.19

Study after study over the last 30 years has confirmed that criminals want, and try to get their hands on, new guns rather than used guns whenever that is possible. Professor Franklin E. Zimring, the Director of Research for the National Commission on the Causes and Prevention of Violence under President Johnson, published two studies in the mid-1970’s establishing that new guns flow more quickly into use in street crime than older guns.20 He concluded that new guns were a disproportionate contributor to firearms crime.21

Professor Zimring’s conclusions have been confirmed several times by ATF and by other researchers. For example, as part of the Youth Crime Gun Interdiction Initiative, ATF noted in one report that guns entering the marketplace between 1993 and 1999 represented 17 percent of the total nationwide supply of firearms, but more than 50 percent of guns traced to crime in 1999.22 Youths caught with illegal guns used a very high proportion of new guns, according to the same report.23 ATF concluded that the disproportionate use of new guns in crime confirmed ATF investigators’ experience that illegal diversion from gun dealers is a significant aspect of gun crime.24

Of course, new guns can only consistently be obtained from licensed firearms dealers. ATF Director Steve Higgins made this point in testimony before Congress back in 1993:

It is [ATF’s] experience that access to lawful channels of firearms in commerce is overwhelmingly attractive to criminals. Quantity and selection that cannot be provided consistently by house burglaries can only be obtained through the retail market.25

The point was recently confirmed by, of all sources, the owner of Don’s Guns and Galleries
in Indianapolis, Indiana, which carries the dubious distinction of having sold the second highest number of crime guns in the nation over a six-year stretch.26

The criminal gets the gun by stealing it? Baloney. He gets the gun off the street. He just buys it. A guy buys it from me and goes through all of this stuff to get checked out. There's nothing to stop that guy from selling to anybody he pleases.27

Two major studies by noted criminologists Philip J. Cook and Anthony A. Braga have also charted the role that acquisitions of new guns from gun dealers play in gun crime. In one study, Cook and Braga noted that newer guns are “greatly overrepresented” among crime guns, “despite the fact that it appears quite rare for the purchaser and possessor to be the same person.”28 They also echoed ATF’s conclusion that more than 30 percent of the handguns used in homicides (32.4 percent), assaults and robbery (33.5 percent), vice and narcotics (30.6 percent), and firearms offenses (32.7 percent) are three years old or less, yet the annual sale of new handguns represents less than three percent of the number of handguns in circulation.29 They concluded that the “disproportionate representation of new guns among those recovered by the police” suggest that interventions aimed at blocking those guns from entering the illegal market may prove effective in reducing gun crime.30

In another study, Cook and Braga reviewed a number of surveys taken of criminals and juveniles on where they obtained their illegal guns. They concluded that the survey literature, as well as crime gun trace and investigative data, indicates that firearms dealers play an important role in supplying illegal gun markets.31 ATF has also concluded that surveys of juveniles are consistent with ATF’s crime gun tracing analysis that diversion of firearms from gun dealers “is a significant source of crime guns.”32 Further, ATF investigations have identified the relationships between gun traffickers and the “straw purchasers”33 they utilize to obtain new guns from dealers as primarily friends, relatives, intimate partners or spouses.34 These are the same sources that criminals often cite in surveys regarding how they obtained their firearms.35

One of the prime reasons criminals want new guns is to avoid the risk of having a gun that could be linked to other crimes.36 New guns are also perceived as less likely to jam during use.37 Moreover, criminals prefer semiautomatic pistols because they accept high-capacity detachable magazines that greatly increase firepower,38 and these weapons tend to be much newer than other handguns.39

**GUN DEALERS ARE THE PRIME SOURCE FOR ILLEGAL GUNS**

Given the high demand for new guns by criminals and juveniles, it is not surprising that the illegal market for guns is largely a product of the diversion of massive numbers of guns from licensed gun shops.40 ATF trafficking investigations have confirmed that corrupt gun dealers are the source of the largest number of firearms diverted into the illegal market.41 A report issued in 2000 found that corrupt gun dealers, on average, trafficked more than 350 guns each. Overall, those dealers were linked to about 48 percent of the 84,000 guns trafficked in ATF’s investigations during one period. This high percentage did not even count most dealers that
supplied straw purchasers in situations where the dealer should have known he was making an illegal sale. Earlier ATF gun-trafficking investigations also stressed the central role that licensed gun dealers play in gun trafficking cases.

As will be seen below, what happens in these dealerships is alarming. Gun traffickers often don’t even have to try to conceal their illegal intentions. Even in obvious situations where the person who is buying the gun – by selecting it and paying for it – is not filling out the paperwork, many dealers make those sales. Other cases involve the purchase of multiple handguns, often of the same make and model of cheap pistol, when any responsible gun dealer would realize the guns are going to be resold on the streets to juveniles or felons. A third common scenario is the repeat customer who spreads out his purchases to avoid having Federal multiple sales forms filled out. Such customers often buy handguns of the same or similar make and model every week for months to avoid the Federal requirement that dealers report a buyer’s purchase of two or more handguns in a five-day period. Perhaps the first sale or two would not be detectable by even a conscientious dealer. But soon enough, this trafficking pattern should be obvious to anyone.
Disturbingly, a random survey of licensed gun dealers done by researchers at UCLA revealed that about 50 percent of them were willing to sell firearms in situations where they should have declined the sale to prevent diversion into the illegal market. Random inspections by ATF of licensed gun dealers nationwide have revealed that a large percentage have violated Federal firearms laws. For example, in 1993, ATF found that 34 percent of gun dealers had Federal firearms violations. In 1998, ATF found that 56 percent of dealers and 30 percent of pawnbrokers selling 50 or more guns had Federal firearms violations. In addition, 18 percent of the dealers and 45 percent of the pawnbrokers had guns missing from inventory in the 1998 survey.

The problem of gun dealer misconduct has also been recognized within the gun industry. For example, ATF’s 1993 inspection report led one gun industry insider to call for a “proactive industry strategy” to address the “serious potential for illegal firearms transactions through ostensibly ‘legal’ … channels,” and “minimiz[e] the possibility of illegal transactions through unscrupulous [gun dealers].” Bill Bridgewater, head of the National Alliance of Stocking Gun Dealers, testified to Congress about the serious problem of corrupt gun dealers, while his organization published alarms in its newsletter, the Alliance Voice. Industry whistleblower Robert Ricker, a former lobbyist for the National Rifle Association and an industry trade group, has testified that the industry was well aware throughout the 1990s that guns were being diverted into the illegal market by gun dealers, but decided to take no action. Former Smith & Wesson executive Robert Hass and Kansas gun dealer Robert Lockett have also testified about the gun industry’s complicity in continuing to supply corrupt gun dealers.

Studies of the sources of crime guns have also shown, repeatedly, that almost 60 percent of the guns traced to crime by ATF originated with only about one percent of the nation’s gun dealers. A city-by-city mapping of these crime gun sources reveals that a small number of dealers supply a large percentage of the crime guns in most major cities nationwide.

Significantly, when ATF inspected the records of these high-trace dealers, it found that the vast majority of them – 75 percent – had violated Federal firearms laws. Although the identities of these dealers has largely been kept secret due to lobbying efforts by the gun industry and the National Rifle Association, one major report identified the worst of them when it published a list of the 120 gun dealers nationwide that sold more than 200 crime guns traced between 1996 and 2000.

In addition, cities in states with strong gun laws tend to be flooded with guns sold at dealerships in states with weaker gun laws. Thus, about 85 percent of the crime guns in New York City originate with gun dealers outside New York State, primarily dealers in Southern states with weak laws. Crime guns in cities located in states with weak gun laws tend to be “homegrown”; that is, to originate with dealers in those states. Thus, over 80 percent of the crime guns in Houston, Atlanta, Indianapolis, and New Orleans originate with gun dealers in their home states. The diversion of crime guns from licensed gun dealers fuels gun crime in urban areas in states with weak gun laws as well as in states with strong gun laws.
as we have seen, criminals, juveniles, and other prohibited purchasers demand new guns for use in crime, and these new guns can only be consistently obtained from licensed gun dealers. As a result, licensed gun dealers are the primary source for illegal guns.

The diversion of guns into the illegal market is steady, however, only because too many gun dealers are complicit in supplying gun traffickers that they should turn away. Apparently, they are unable to resist the money offered by illegal gun buyers.

These types of illegal transactions likely occur every day in licensed gun dealerships across the United States. Yet in every one of the profiles we include in this report, the dealer has gone unpunished and continues selling firearms as if nothing happened.

If Federal gun laws were strong enough to punish both illegal traffickers and the dealers that supply them, the problem would not be so severe. Unfortunately, significant weaknesses in Federal gun laws make it very difficult for ATF to punish or sanction complicit gun dealers that supply the illegal gun market. We elaborate on these two points in Parts Three and Four of this report. In this section, we explain – using real-life examples – how gun dealers steadily supply the illegal market and get away with it.

“The Treasury Department has consistently maintained the position that the underpinnings of effective firearms regulation must be a body of responsible and cooperative Federal firearms licensees. The most critical point of contact in the implementation of Federal, State and local firearms regulations is the firearms dealer. For in the majority of cases it is he who must assure that firearms sales are in compliance with the law. In short, the Federal licensee can become a critical asset or an unmanageable liability in our quest for responsible firearms regulations.”

David R. MacDonald, former Assistant Secretary of Treasury (Enforcement)
**Videotaped Dealer Stings Illustrate Crime Gun Diversion**

Some of the most compelling evidence that illegal diversion is an everyday occurrence among licensed gun dealers is provided by a series of undercover “sting” operations authorized by major city law enforcement officials over the last several years.

In each of these stings, nearly every dealer approached was willing to make an illegal sale. Moreover, although all of these stings received national publicity and varying levels of public outcry, there does not appear to have been any drop off in the readiness of dealers approached by undercover officers to make such sales.

Before filing a lawsuit against a dozen Cook County gun dealers that were the leading suppliers of illegal guns recovered in Chicago, Chicago police conducted a major sting of those dealers to establish their willingness to make sales to obvious straw purchasers. Undercover officers were able to purchase hundreds of firearms even though the person picking out the weapons and paying for them was not the person filling out the necessary paperwork, in violation of Federal law. Officers even went so far as to indicate they wanted the guns to settle scores or engage in other illegal activity, but were never turned away. All of this was captured on videotape, portions of which were shown on CBS’s 60 Minutes.

After the Chicago sting received nationwide publicity on television, prosecutors in Wayne County, Michigan, where Detroit is located, conducted a similar sting of area gun shops. In nearly every case, persons telling the gun dealer that they had a felony record or were juveniles were allowed by the dealer to use in-store accomplices to fill out required forms and purchase guns in direct violation of Federal law. These stings were also captured on videotape.

The clerk nevertheless made the sale and handed the gun and two boxes of ammunition to the person that had told him he had a felony record. Videotape of this sting was shown on NBC’s Dateline. Subsequently, the City of Gary conducted a videotape sting of several Northern Indiana gun dealers that supplied more than 60 percent of the crime guns recovered in Gary. Those dealers also sold guns to obvious straw purchasers.

More recently, New York City has used undercover operatives to conduct stings on nearly 30 gun dealers in five different states known to supply significant numbers of crime guns recovered in New York. In virtually every case, the straw purchase scenario set up in the store was the same. A male and a female entered the gun store together. The male went up to the counter, discussed purchasing a gun or guns with the clerk and proceeded to select a gun or guns to buy. Only when the sale was ready for completion would the female, who had been wandering through the store uninterested in the firearm sale, come over to complete the
paperwork. Moreover, even after the female buyer was cleared to purchase the gun, the male purchaser would hand over cash to the dealer.\textsuperscript{71} Twenty-seven dealers made these sales and were sued by the City of New York. A number of them have settled those lawsuits by agreeing to be monitored on an ongoing basis by a special master.\textsuperscript{72}

**LICENSED DEALERS SUPPLY GUN TRAFFICKERS IN MANY WAYS**

While felons, gang members, and juveniles demand new guns, they would not be able to acquire them so easily without the complicity of gun dealers that are all too ready and willing to make gun sales they should not make. It takes two sides to consummate an illegal gun transaction: a buyer and a seller.

To illustrate how guns move into the hands of criminals with the complicity or outright cooperation of licensed gun dealers, we examined news reports and publicly-available court records of gun traffickers charged with violating Federal gun laws. These case files provide compelling examples of gun dealers that have supplied illegal gun traffickers with firearms under circumstances where it was readily apparent that the guns were destined for the illegal market. Of course, once guns have been diverted in this way, their subsequent use in violent crime becomes almost inevitable.

Our Case Summaries at the end of this report provide more than two-dozen examples of dealer complicity, drawn from every region of the country. These examples are just the tip of the iceberg, however.\textsuperscript{73} Unfortunately, in none of these cases – all of which involve persons charged for illegally trafficking firearms – was the gun
dealer that made the sale criminally prosecuted for its role in selling guns to traffickers, nor was its license revoked by ATF. All are still selling guns.

Large-volume sales

Purchases of large numbers of firearms, usually handguns, are a prominent method gun traffickers use to acquire guns from licensed gun dealers. Indeed, in most of the examples laid out in our Case Summaries section, the person charged with gun trafficking purchased multiple handguns at one time. Multiple sales are considered by ATF to be among the prime indicators that gun trafficking is occurring from a gun shop. Multiple sales reports also provide a significant percentage of leads for ATF gun trafficking investigations. According to one ATF report, handguns sold as part of multiple sales comprised 22 percent of the guns sold in 1999 that were traced to crime that same year. Moreover, guns with obliterated serial numbers – a clear sign of trafficking – are substantially more likely to have been part of a multiple sale.

Dealers ought to be highly suspicious of any multiple sale. Some have even established store policies against making such sales. Moreover, most dealers seldom make multiple sales, whether or not they have a policy. At the very least, gun dealers need to ask a series of probing questions of persons proposing to buy multiple handguns to establish whether there is any legitimate reason for a buyer to acquire more than one handgun at a time. Refusing such sales is not a serious hardship for sellers. Several states, including California, the most populous state in the Nation, and Virginia, home to the NRA, have one-handgun-per-month purchasing restrictions.

The following real-life examples illustrate this method of trafficking. These are discussed in greater detail in our Case Summaries at the end of this report. In every case, it should have been obvious to the dealer that the purchaser was an illegal gun trafficker.

Feature Example – Large-Volume Sales
Charles Brown, Dayton, Ohio

Charles Brown, a gun dealer and president of Hi-Point Arms’ gun distributor, MKS Supply, Inc., sold at least 175 Hi-Point semiautomatic pistols to a gun trafficker and his straw purchaser over a few months in 2000. The gun trafficker, James Nigel Bostic, traveled to Ohio to purchase the guns at an Ohio gun show, then re-sold them at a profit on the streets of Buffalo, New York.

On May 28, 2000, Bostic went to Brown’s booth at the Hara Arena gun show in Dayton, Ohio. Bostic bought five Hi-Point handguns from Brown in this purchase – all of them the same make and model, and selling for about $89 each.

Bostic returned one month later, and this time had his straw purchaser, Kimberly Upshaw, buy eight Hi-Point handguns from Brown. As in each of the following purchases, Bostic selected the handguns and gave his straw purchaser cash to pay for them – totaling several thousand dollars – all in front of Brown. Upshaw, not Bostic, filled out the required paperwork saying she was the purchaser.

In September 2000, Bostic again had Upshaw, his straw purchaser, purchase guns from Brown – this time about 40 Hi-Point handguns. Less than a month later, Bostic and Upshaw made their largest purchase from Brown – 87 handguns – all of the same make and model. On October 14,
Bostic and Upshaw returned to Brown’s booth, and bought yet another 35 Hi-Point handguns.

All of the circumstances of Bostic’s purchases from Brown should have alerted Brown to the likelihood that Bostic was trafficking in guns, and not purchasing them for his own use: extremely high-volume bulk purchases, repeated purchases of the same make and model of gun, cash payments of thousands of dollars, and straw purchases with Bostic selecting the guns and paying for them, while his girlfriend filled out the paperwork, but took no other part in the sale.

Even Bostic’s straw purchasers noted that the dealers were turning a blind eye to Bostic’s obvious plans to traffic the guns – “It was kind of a buddy system.”

Yet, Brown continued to make repeated sales to Bostic, totaling at least 175 handguns.

Bostic trafficked more guns onto Buffalo streets than any other trafficker in western New York. At least 80 of the 250 guns Bostic purchased from Brown and another gun dealer at Ohio gun shows have been recovered in crime in Buffalo. Many were recovered in homicides, attempted homicides, and robberies.

Bostic was arrested in 2002, pled guilty to three counts of gun trafficking, and was sentenced to seven years in prison in 2004. Upshaw was convicted of a misdemeanor and sentenced to two years probation and a $1,000 fine.

Brown was not prosecuted for engaging in the sales and he remains President of gun distributor MKS Supply, Inc.

In other examples:

- **Peddler’s Post, Wilmington, Ohio** sold a gun trafficker 50 handguns between October 1993 and February 1994, 44 of which were later recovered at crime scenes in New York, Michigan, and North Carolina. The first sale was of 21 handguns: four identical Hi-Point 9mm pistols and 17 identical Lorcin .38 caliber pistols. The same dealer supplied another gun trafficker with 117 firearms as part of numerous multiple sale transactions.

- **Windy City Pawn Brokers, Phoenix, Arizona** sold 52 semiautomatic handguns in one sale on November 23, 2002, to gun traffickers seeking to buy them for resale in California. Less than five months later, it sold another 35 pistols to the same traffickers in a second transaction.

- **Fryeberg Arms, Fryeberg, Maine** sold 37 handguns to a gun trafficker spaced out over just four sales in 2003 and 2004. In one sale, Fryeberg Arms sold 12 Jennings handguns, and even assured the buyer he would not submit the required multiple sale form to Federal law enforcement.

All of these dealers are still selling guns.

**Repeat customers**

Another common way for traffickers to acquire guns from licensed dealers is to avoid or minimize multiple sale reporting requirements by spreading out handgun purchases. In the Chicago sting, dealers even suggested to undercover officers that they space out their purchases to avoid detection by law enforcement, as dealers are only required by Federal law to report to ATF sales of two or more handguns within a five day period.82

In one case involving an Illinois gun dealer, gun trafficker Donald Feissinger routinely purchased the same make and model of Bryco
handgun from the Old Prairie Trading Post and then resold them for profit. Over the course of two years, Old Prairie sold him 72 handguns without ever triggering a multiple sale form to be filled out, thus concealing his trafficking from law enforcement. One of these guns was resold to hate-crime shooter Benjamin Nathaniel Smith, who used it on a shooting spree through Illinois and Indiana in July 1999. Smith had been turned away by a conscientious dealer in June 1999 after failing a Brady background check. Had Old Prairie Trading Post cut off Feissinger after a couple of purchases, Smith’s multiple victims might still be alive or uninjured today.84

On May 23, 2002, Costello’s sold Peterson a Hi-Point 9mm semiautomatic handgun. On June 1, Costello’s sold her another Hi-Point. Three weeks later, Peterson purchased two more. On July 13, Costello’s sold Peterson a Hi-Point .380-caliber semiautomatic handgun. On August 9, Costello’s sold Peterson a Hi-Point 9mm. On November 7, Costello’s sold her another Hi-Point .380-caliber. On February 21, 2003, Peterson bought both a Hi-Point 9mm and .45-caliber semiautomatic of another make. On May 5, Costello’s sold Peterson two Hi-Point 9mm. Less a month later, she was back yet again and purchased another Hi-Point 9mm semiautomatic handgun. She returned two days later and bought a Hi-Point .45-caliber. One month later, Costello’s sold her another Hi-Point 9mm. On August 12, Costello’s sold her another Hi-Point 9mm. On September 9, again, the same gun. On October 24, Peterson bought a Hi-Point .45-caliber. On January 9, 2004, Costello’s sold her a Hi-Point .380-caliber. On March 31, another Hi-Point .380-caliber. On July 31, Costello’s sold her a Hi-Point 9mm. On December 14, Costello’s sold Peterson two Hi-Point .380-caliber and on December 21 two more .380-caliber.

Peterson was sentenced to two years in prison for dealing firearms without a license and straw purchasing firearms.

Costello’s was not prosecuted and it remains open for business.

In other examples:

- **Sauers Trading, Williamsport, Pennsylvania** sold 11 firearms to drug-addicted gun trafficker Perry Bruce in 1997 despite numerous indicators that made it clear he was buying the guns for resale on the street. Bruce stated his occupation was “unemployed” and used his welfare ID card, yet paid thousands in cash for the guns he repeatedly bought.
bought from Sauers Trading. One of these handguns was picked up on the streets of Philadelphia and used to shoot and kill a seven-year-old boy.

- **Jo Jo’s Gun and Pawn, Birmingham, Alabama** supplied several straw buyers acquiring guns for Chicago gangs. At least three members of the trafficking ring bought multiple handguns from Jo Jo’s spaced out over a couple of weeks in August and September 2002. Many of the guns sold by Jo Jo’s were recovered by Chicago police after shooting incidents.

- **D & R Arms, Portsmouth, Virginia** supplied several members of a gun trafficking ring that were reselling guns on the streets of New York City in sales from November 2004 to February 2005. The buyers would come in and purchase the same guns over and over spaced out over a few days, apparently in an attempt to avoid multiple sale reporting requirements.

- **Delia’s Gun Shop, Philadelphia, Pennsylvania** sold 14 firearms to gun trafficker Tyree Thomas in a series of small transactions in March and April 2005. Eventually, ATF was tipped off to the illegal sales, but not before Delia’s profited by selling more than a dozen guns to the trafficker.

All of these dealers are still selling guns.

**In-store straw purchasing teams**

Using in-store accomplices to fill out the required Federal paperwork is another method common to gun traffickers, and one that should be spotted *every time* by an alert gun dealer. The most obvious signs of this occur when the person that is filling out the Federal forms is **not** looking at, handling, or selecting the gun to be purchased, and/or paying for the weapon. Even if the purchaser is buying only a single handgun, this type of sale should be refused, but often is not.

Undercover stings conducted by Chicago, Gary, New York City, and Wayne County, Michigan all utilized this method to implicate gun dealers. In most of the cases, undercover officers even told gun dealers that the person who was purchasing the gun – but not filling out the forms – had a felony record or was too young to purchase a firearm. Yet dealers sold guns even in these blatantly illegal circumstances.

---

**Feature Example – In-Store Straw Purchasing Teams**

**Eagle Station, Inc.**

*Fort Valley, Georgia*

Gun dealer Eagle Station, Inc. sold 19 handguns to a straw purchasing ring over three weeks in September and October 2005. The traffickers purchased guns in bulk at Eagle Station and other Macon and Fort Valley, Georgia, dealers, then transported the guns to Washington, D.C. and Maryland to re-sell on the streets.

On September 21, 2005, Travis Montfort, aka “Bear,” purchased three handguns from Eagle Station – a Hi-Point 9mm, a Jennings 9mm, and a Cobray 9mm. Montfort returned the same day, with Steve “LNU” and Anwar Prater, when Prater purchased three more handguns. While Prater filled out the required paperwork indicating he was the purchaser, Steve was the one who spoke with the store clerk and indicated which firearms
he wanted. Steve gave Prater cash to buy the handguns while they were in the store.

Less than three weeks later, on October 10, Montfort returned to Eagle Station and bought six handguns — two more Hi-Points, and four other semiautomatic guns.

Prater also returned to Eagle Station on October 10, when he and another trafficker purchased seven semiautomatic handguns. This time, Prater chose the seven guns, and asked the other trafficker to fill out the paperwork saying he was the purchaser. Prater paid for the guns with $2,000 in cash.

The traffickers’ purchases had numerous red flags: purchases of multiple guns at one time, repeat buyers, cash payments of thousands of dollars, and signs of a straw purchase where one individual selected the guns, while another person filled out the paperwork.

The members of the trafficking ring were indicted for straw purchasing in April 2006 and three of the purchasers subsequently pled guilty to making false statements. They face maximum sentences of 10 years and a $250,000 fine. One of the leaders of the ring also pled guilty to murdering his girlfriend in Warner Robins, Georgia.

Eagle Station, Inc. was not prosecuted for its sales and the dealer is still selling guns.

In other examples:

- **Abington Gun Sports, Willow Grove, Pennsylvania** sold guns to several women straw buyers used by gun traffickers Andre and Leon Henry. On multiple occasions in August 2003, the Henrys entered the store to select guns and pay for them, but used their female accomplices to fill out the paperwork.

- **Don’s Guns and Galleries, Indianapolis, Indiana** sold six handguns to a Chicago gang member and his straw buyer while both were in the store on October 29, 2004. The gang member selected five Hi-Point pistols and an AK-47, but the straw buyer filled out the paperwork. Four of the handguns were later recovered by Chicago police.

- **Army & Navy Store, Whitehall, Pennsylvania** sold 10 handguns to female straw buyers of Nashawn Omar Law, a felon and gun trafficker. Each of the sales to Law and his female straw buyers in 2003, 2004, and 2005 involved Law picking out the weapons and paying while his accomplice completed the Federal paperwork. Several other Pennsylvania dealers also sold guns to this in-store straw purchasing team.

All of these dealers are still selling guns.

**Multiple copies of the same model gun**

One telling sign that gun trafficking is occurring is the purchase of multiple copies of the same make and model of firearm. It doesn’t matter whether the gun is a cheap Saturday Night Special or a more expensive model — collectors seldom collect duplicates of the exact same gun. After all, these cases don’t involve match-set handguns that collectors occasionally purchase. When buyers seek to purchase multiple copies, it is almost certain that they intend to sell off one or all of the copies in the illegal market. Dealers should be extremely suspicious of such sales.

Instances of this practice are commonplace. For example, Donald Feissinger bought 72 cheap Bryco pistols from Old Prairie Trading Post.87
Feature Example – Multiple Copies of the Same Model Gun

Green Country Arms and Pawn
Tulsa, Oklahoma

Green Country Arms and Pawn was one of three Oklahoma dealers that sold handguns to a gun trafficking ring that transported the guns to Maryland for resale on the streets of Baltimore. The traffickers used straw purchasers to buy approximately 240 semiautomatic handguns from the dealers over seven months.

The straw purchasers made regular visits to Green Country Arms and Pawn and straw purchased as many as a dozen handguns per visit. The sales often occurred only a few days or weeks apart, and were high-volume purchases of the same make and model of gun almost every time. All of these circumstances should have been clear flags to Green Country that the sales were not legitimate.

Green Country sold straw purchaser Burin McDaniel a total of 33 Hi-Point semiautomatic pistols over three months. On December 1, 2003, Green Country sold McDaniel two Hi-Point 9mm semiautomatic pistols. Four days later, McDaniel returned and Green Country sold him two more. On December 15, Green Country sold McDaniel 13 guns at one time – all Hi-Point semiautomatic pistols. On January 3, 2004, McDaniel purchased five more Hi-Points. On January 30, Green Country again sold McDaniel 13 Hi-Point pistols in one sale and on February 28, 2004, the dealer sold him another eight Hi-Points.

On January 27, 2004, Green Country sold straw purchaser Darien Lewis six Hi-Point pistols in one purchase. Lewis returned on February 28 and Green Country sold him two more Hi-Point handguns.

Green Country sold straw purchaser Wilbert Ross, Jr. 27 Hi-Point semiautomatic pistols in just over a month. On September 13, 2003, Green Country sold Ross six Hi-Points in one sale. Ross returned six days later and bought four more. On October 10, Green Country sold Ross another two Hi-Point pistols. One week later, October 17, the dealer sold Ross yet two more, and the next day, four more. On October 28, two more; two days later, on October 30, two more; the next day, two more, and finally on November 14, Green Country sold Ross four more Hi-Points.

In a similar scenario, Green Country sold straw purchaser Steven Thompson 22 guns in less than a month, all Hi-Points except one. On October 17, 2003, Green Country sold Thompson four Hi-Point semiautomatic pistols. A week later, Green Country sold Thompson a Leinad 9mm semiautomatic pistol, and seven Hi-Point pistols in one sale. On November 13 the dealer sold Thompson 10 Hi-Point pistols in a single purchase.

Despite the red flags for each of these repeat sales of multiple guns, Green Country chose to complete the sales.

Burin McDaniel was sentenced on October 27, 2004 to eight months imprisonment and the remaining traffickers each received five years probation.

Green Country Arms and Pawn was not prosecuted and the dealer is still selling guns.

In other examples:

• W. D. Guns, Alva, Oklahoma and RJ’s Guns of Broken Arrow, Oklahoma repeatedly sold multiple copies of the same Hi-Point pistols to a gun trafficking ring that resold the guns in Baltimore. W. D. Guns and RJ’s Guns were two of three Oklahoma dealers that supplied the traffickers with about 240 handguns over a period of seven months in late 2003 and early 2004.
• Delia’s Gun Shop, Philadelphia, Pennsylvania sold straw purchaser Ernest Selser seven handguns – all the same Hi-Point 9mm pistol – over three months in 2000.

All of these dealers are still selling guns.

**Dealer sales to traffickers at gun shows**

Dealers also often travel to gun shows to increase their sales. Gun shows attract large gatherings of gun buyers in a single location, and occur thousands of times a year in the United States. More importantly, gun shows attract criminals and juveniles unable to pass Brady background checks. This is because, in most states, “private” sellers at such shows do not have to conduct a background check before completing the sale. The juveniles that launched the massacre at Columbine High School obtained some of their guns – including the Tec-9 assault pistol they used – at a gun show. According to ATF, a review of its “investigations indicates that gun shows provide a forum for illegal firearms sales and trafficking.”

With so many gun traffickers and prohibited purchasers in attendance, gun dealers often make sales to illegal buyers at gun shows. Although they are required to follow the same laws that apply at their gun store, many dealers are unable to resist the cash offered by traffickers at gun shows. The Wayne County, Michigan sting caught several examples of this on videotape when undercover officers visited dealers set up in Gibraltar Trading Post.

**Feature Example – Dealer Sales to Traffickers at Gun Shows**

**Gallipolis Gun & Archery Shop**
**Dayton, Ohio**

Jim & Sandra Cyrus, owners of Gallipolis Gun & Archery Shop, operate at the Hara Arena Gun Show in Dayton, Ohio. The Cyruses sold at least 52 Hi-Point semiautomatic pistols to a gun trafficker and his straw purchaser over a few months in 2000. The gun trafficker, James Nigel Bostic, traveled to Ohio to purchase the guns, then re-sold them at a profit on the streets of Buffalo, New York.

On July 15, 2000, Bostic and his straw purchaser, Kimberly Upshaw, purchased eight handguns from the Cyruses. He returned to Cyruses’ booth at the same gun show a month later, with Upshaw and his girlfriend Scherie Smith. Bostic attempted to purchase 24 Hi-Point handguns, but the background check on Bostic delayed the sale. Bostic then turned to his accomplices, and had Smith complete the purchase for half of the guns, and Upshaw the other half. The dealer knew that Upshaw and Smith were not the true purchasers of the guns – Cyrus even told Smith that Bostic could not pay for the guns. So Bostic handed the money to Smith, who handed the money to the dealer, and Cyrus completed the sales. Smith said “[the dealer] definitely knew it wasn’t for me. They knew it was for [Bostic].”

Bostic and Upshaw returned to the same dealer in September, buying another eight handguns. On October 14, 2000, Bostic again approached Cyruses’ booth, this time with straw purchaser DiAnna Peterson, who bought 10 guns for Bostic. In both cases, the straw purchasers, not Bostic, filled out the required paperwork saying they were the purchasers, while Bostic chose the guns.

The red flags of Bostic’s purchases from the Cyruses should have alerted the dealer that Bostic...
was trafficking in guns, and not purchasing them for his own use. Yet, the Cyruses completed the sales anyway.

At least 80 of the 250 guns Bostic purchased from Cyrus and gun dealer Charles Brown at Ohio gun shows have been recovered in crime in Buffalo. Many were recovered in homicides, attempted homicides, and robberies.

Bostic was arrested in 2002, pled guilty to three counts of gun trafficking, and was sentenced to seven years in prison in 2004. Smith, Upshaw, and Peterson were convicted of a misdemeanor and sentenced to probation.

The Cyruses were not prosecuted and they are still selling guns.

In other examples:

- **Classic Pawn and Jewelry, Inc., Chickamauga, Georgia** sold eight guns to one trafficker and 20 more pistols to two other traffickers during a gun show in Kennesaw, Georgia in August 1998. Several of these guns were recovered from criminals in New York City, and one of the guns was used to shoot a New York police officer.

- **Charles Brown, Dayton, Ohio** sold at least 175 Hi-Point semiautomatic pistols to gun trafficker James Bostic and his accomplices at a gun show in Dayton in 2000. Dozens of these guns have been traced to crime on the streets of Buffalo, New York.

All of these dealers are still selling guns.
FLAWS IN THE LAWS

“The current limitation on ATF’s inspection authority enables unscrupulous licensees to conceal violations of the law and is an impediment to ensuring compliance with the provisions of the [Gun Control Act].”

Steve Higgins, former Director of ATF

In the gun trafficking case examples we have just described, one would think that the gun dealers that supplied these traffickers would either lose their licenses or be prosecuted for selling to illegal buyers. However, neither of these events happens with any frequency.

Until 2005, ATF did not revoke more than 54 licenses in any year going back to 1975, and averaged well under 20 revocations annually. A news report issued this year, however, indicates that ATF has increased its dealer revocations, revoking 131 dealer licenses in 2006 alone. This may have been a response to strong criticism of ATF’s inspection program that the Department of Justice Inspector General issued in 2004, shortly after the agency was transferred from the Department of Treasury to the Department of Justice. The increased enforcement is certainly a step in the right direction, but it is not clear if this practice will continue or will lead dealers to reform after decades during which they have faced almost no threat of sanctions. The number of revocations is still just a tiny proportion of the number of dealers cited by ATF for violating Federal gun laws. Moreover, even with higher numbers of revocations, corrupt gun dealers are almost never prosecuted for criminal violations. Why not? There are several reasons.
ATF Cannot Adequately Inspect Dealers

Prior to 1986, ATF was permitted to conduct random inspections of licensed gun dealers to ensure compliance with Federal gun laws.\(^9\) Faced with the possibility of random audits by ATF, gun dealers were on notice that any failure to comply with the law could be caught by ATF at any time, subjecting the dealers to sanctions, loss of their license, or criminal penalties.

Such compliance inspections are necessary to verify that gun dealers are maintaining records concerning each of the firearms they buy and sell. These records are kept in “acquisition and disposition” books that record all guns acquired and sold by the dealer.\(^1\) Crime guns that are recovered by law enforcement often are traced to find the perpetrator, as well as to determine how he or she obtained the gun. If a dealer fails to keep an accurate and complete sales record, it jeopardizes the tracing process and impedes law enforcement.

In 1986, Congress passed the Firearm Owners’ Protection Act\(^1\) under intense lobbying by the NRA.\(^2\) This law limited ATF to a single, unannounced inspection of a gun dealer in any 12-month period.\(^3\) This is true even for dealers found to be violating Federal firearms laws. ATF can merely warn a dealer not to violate the law again, but is prohibited from conducting another surprise inspection over the next 12 months.

When faced with a choice between the remote threat of future prosecution and an immediate cash payoff, too many gun dealers just accept the cash.

Corrupt gun dealers can sell hundreds, if not thousands, of guns to traffickers during this period of time.

ATF Faces a High Burden of Proof to Bring Legal Action

Under current law, to bring legal action, ATF generally must establish that gun dealers violated the law “willfully.”\(^4\) In criminal cases, this burden of proof requires that a prosecutor not only prove that the gun dealer engaged in illegal conduct, but also acted with a “bad purpose” and “with knowledge that his conduct was unlawful.”\(^5\) In civil proceedings to revoke a gun dealer’s Federal firearms license, ATF usually must show repeated violations of the law over many years to meet this heightened “willful” burden of proof.\(^6\) Frequently this has meant that rogue dealers have been able to continue funneling guns to the criminal market for many years before ATF can shut them down.

The Brady Center has recently written in-depth reports on three of these rogue dealers – Valley Gun of Baltimore, Maryland, Lou’s Loans of Upper Darby, Pennsylvania, and Trader Sports of San Leandro, California.\(^7\) Each report illustrates how this heightened burden of proof has handcuffed ATF’s enforcement efforts.

Before 1986, courts interpreted Federal gun laws to require a “knowing” burden of proof.\(^8\) Under the knowing standard, prosecutors had to show that gun dealers had “knowledge of the facts that constitute the
offense,” but not knowledge that the conduct was illegal. In other words, in a case of illegal dealing in firearms, prosecutors would have to show that a dealer knew a gun trafficker buying the gun was not buying it for him or herself. The dealer’s knowledge of the illegality of the sale would not have to be proven.

**Serious Recordkeeping Violations Are Merely Misdemeanors**

The Firearm Owners’ Protection Act has also aided corrupt gun dealers over the last twenty years by classifying violations of Federal firearms recordkeeping laws as misdemeanors rather than felonies, as they were prior to 1986. As one court recently explained, because “lost” records frequently mask illegal sales, “[w]hen a firearms dealer cannot account for guns or fails to ensure that guns are sold to authorized persons, the public safety is directly and meaningfully implicated.” However, since Federal prosecutors generally do not expend their limited resources prosecuting misdemeanors, most dealers caught violating Federal law by ATF inspectors usually escape criminal prosecution.

The lack of criminal prosecutions of gun dealers dramatically skews the incentives when dealers are faced with gun traffickers offering cash for firearms. When faced with a choice between the remote threat of future prosecution and an immediate cash payoff, too many gun dealers just accept the cash.

One of the stings conducted by Wayne County, Michigan, illustrates this trade-off perfectly. After being informed that the buyer was a felon and needed his friend to fill out the paperwork for the purchase of a firearm and ammunition, the dealer explained his dilemma in this dramatic exchange, caught on undercover videotape:

**Dealer:**

“I really wish you wouldn’t even hold [the gun]. You know what I’m saying? I could get in a hell of a lot of trouble for doing this. He’s going to be answering a question on the government form that says, is he buying this gun for him? You want to tell me you’re buying the gun and you want to lie on the sheet and all that, I don’t care. The minute you walk out of here it’s your business. Right now it’s my business. And I don’t want to go to jail. This question here says: ‘Are you buying the gun for yourself?’ All three of us know you are not. You know what I’m saying? … $573.36 with the ammo… Here you go.”

The dealer finally sold the gun even though he knew his actions were illegal.

Unfortunately, one way dealers can cover up these types of illicit transactions is to simply “lose” the Federal forms when they engage in suspect sales. Without videotape capturing what actually transpires in the gun shop, it is nearly impossible for ATF to prosecute corrupt gun dealers willing to make such sales.

**ATF Has Limited Remedies Other Than Revocation or Prosecution**

Federal law currently places severe restraints on ATF’s ability to revoke licenses from gun dealers that violate Federal law. Despite the fact that ATF inspections often reveal scores of violations of law by gun dealers, the revocation of
a dealer’s Federal firearms license is a rare event.114 Moreover, ATF can only assess civil fines against dealers or suspend them under two extremely limited situations.115 As far back as 1976, the Department of the Treasury, which at that time oversaw ATF, asked Congress for broader authority to fine and/or suspend dealers.116

In fiscal year 2003, ATF completed 1,812 dealer inspections that uncovered almost 150,000 violations of Federal law, with an average of more than 80 violations per dealer.117 Despite this large number of dealers with multiple violations, ATF issued only 54 notices of license revocation that year.118 In part, this is due to the overly burdensome requirement that ATF prove that a dealer “willfully” violated the law, requiring proof that the dealer not only broke the law but also knew that his or her conduct was unlawful.119 The requirement that a defendant actually know that he is breaking the law is extremely rare in most criminal cases, let alone administrative agency actions. Because of this standard, ATF generally requires repeated violations of the law over many years before it attempts to revoke a license.

**ATF is Understaffed**

As far back as 1976, ATF complained to Congress that it did not have enough resources to complete all of its tasks.120 This problem grew worse in the 1980s, when the NRA was pushing hard to weaken ATF.121 Between 1980 and 1987, for example, the number of ATF agents and inspectors was slashed even as the number of licensed firearms dealers exploded.122 In the early 1990s, ATF Director Steve Higgins testified to Congress that it would take 750 staff years to do a background check on every new Federal firearms license applicant.123 By July 2004, the U.S. Department of Justice Inspector General’s office found that “most [licensed gun dealers] are inspected infrequently or not at all.”124 Indeed, the Inspector General concluded, with ATF’s limited manpower, “it would take the ATF more than 22 years to inspect all [federal firearms licensees].”125 The Inspector General added: “A consistent and timely inspection process is essential for identifying and addressing scofflaw dealers and reducing the availability of illegal firearms to criminals.”126

According to the report in the Baltimore Sun discussed above, ATF has apparently recently increased its inspection staff, perhaps in response to the Inspector General’s report.127 What the report does not indicate, however, is how long this change in staffing can be sustained, or whether ATF was forced to pull agents from other gun trafficking interdiction efforts. In the past, as ATF Director Higgins has testified, ATF has been able to shift resources in the short term, but not been able to sustain those efforts given overall budget constraints.128

**Multiple Handgun Sales Are Not Illegal Per Se**

Recognizing that multiple purchases of handguns are a common method of gun trafficking, ATF, through administrative regulation, started requiring gun dealers to report the sale of two or more handguns within a five-day period in 1975.129 By 1976, however, ATF backed a bill introduced in Congress that would...
have barred multiple handgun sales entirely.\textsuperscript{130} The reasons were spelled out in the House Report on the legislation:

“Evidence gathered by the Subcommittee indicates that purchasers acquiring handguns under false pretenses often acquire them in large lots with intent to resell them illegally, often to out-of-State sources…. A recent Chicago study of 100 city dealer compliance audits conducted by ATF and selected at random for evaluation showed that, of multiple sales records reviewed, 58 percent of all handgun purchases appeared to violate the Act, as compared to a 1 percent estimated violation rate in transactions selected at random.”\textsuperscript{131}

The Ford Administration’s Department of Justice, commenting on the legislation, took the position that limiting handgun sales to one per month was essential to stopping gunrunners.\textsuperscript{132} This view was echoed by David MacDonald, Assistant Secretary of the Treasury (Enforcement), who stated that “it has become evident that this illicit firearms trafficking has been facilitated by the absence of Federal controls upon the multiple sales of handguns.”\textsuperscript{133} The legislation did not pass, however.

In the 30 years since that bill was introduced, several states have prohibited multiple handgun sales, most notably Virginia, Maryland, and California. The Virginia law in particular has been proven to be very effective at reducing gun trafficking from that state into states with stronger gun laws in the Northeast.\textsuperscript{134} The fact that such sales are not \textit{per se} illegal, however, in other states permits gun dealers to turn a blind eye to traffickers buying guns in bulk and then claim to ATF that they could not have known that traffickers were purchasing the guns because such sales are legal.\textsuperscript{135}

**Current Law Hides Corrupt Dealers**

Over the last 10 years, ATF has traced more than two million crime guns.\textsuperscript{136} Each of these traces charts the path of a crime gun from manufacturer through distributors to the retailer that sold the gun to a member of the public. It has stored these records in a massive database that law enforcement uses on a daily basis to identify the sources of crime guns and develop leads on gun traffickers. According to one ATF study, about 20 percent of gun trafficking investigations were initiated after analyzing crime gun tracing records, and another 13 percent were initiated after reviewing multiple sales forms.\textsuperscript{137} ATF has, in the past, released elements of this database to law enforcement, criminologists, the media, and the public, allowing them to analyze trends in gun trafficking, identify loopholes in our gun laws, and make gun law enforcement responsive to changing trafficking patterns.

Additionally, crime gun trace data has established that most crime guns are supplied by licensed gun dealers and come from a select few members of the gun industry — almost 60 percent of crime guns are traced back to just one percent of our nation’s gun dealers.\textsuperscript{138} These dealers are not only the leading suppliers of guns to criminals, but not surprisingly have been caught committing massive violations of Federal gun laws.\textsuperscript{139}

Since 2003, however, the gun lobby has pushed legislation that prevents the public from getting crime gun data previously guaranteed by the Federal Freedom of Information Act.\textsuperscript{140} In a stealth campaign aimed at protecting the dealers most responsible for supplying guns used in crime, NRA allies led by Representative Todd
Tiahrt (R-KS) slipped amendments into massive Federal funding bills overriding the public’s right to know information about the source of crime guns. This legislative language – included in must-pass appropriations bills without debate or public scrutiny – has imposed unprecedented secrecy and trumped the public’s right to know crucial details about the gun manufacturers and dealers who supply the criminal market.

The Tiahrt restrictions, first enacted in fiscal year 2003 and reauthorized for 2004, 2005, and 2006, have profoundly stifled public access to information about the sources of crime guns. For example, the restrictions have squashed scholarly and media efforts to analyze why violent gun crime has increased dramatically in the last two years. They have even prevented ATF from publishing reports documenting trends in gun trafficking and gun crimes, and kept law enforcement from being able to identify new sources of crime guns or expeditiously adapt to changing gunrunning schemes. ATF is also prohibited from responding to Congressional inquiries on crime gun trends, should any legislator dare to seek information to assist them in closing loopholes in Federal gun laws.

These restrictions thus endanger the public and serve only one purpose – protecting the gun industry’s profitable sale of firearms to the criminal market.

**Brady Background Check Records Are Being Destroyed**

The Brady Law, which was passed in 1993 and signed by President Clinton, required a waiting period for handgun sales until records were available to instantly check criminal backgrounds of prospective gun purchasers. Once the National Instant Check System (NICS) became operational in 1998, the Justice Department maintained background check records on approved purchasers for six months to ensure that felons and other prohibited buyers were not mistakenly approved. In 2001, the Justice Department issued regulations shortening this record retention period to 90 days, the amount of time needed to ensure proper audits of the NICS system.

Just days after this 90-day record retention period went into effect, however, Bush administration Attorney General John Ashcroft issued new proposed regulations to require approved purchaser records to be destroyed within 24 hours.

The General Accounting Office (GAO) concluded that destroying background check records this quickly would prevent the government from auditing the NICS system to ensure its accuracy and “would have public safety implications.” For example, both the GAO and the Justice Department’s Inspector General found that the 24-hour record destruction would aid lawbreaking gun dealers. They warned that corrupt gun dealers could provide the FBI with a different name than that of the actual buyer in order to get approval for the name of the false purchaser, and then proceed with the sale to the actual prohibited buyer. Such a scheme would be nearly impossible to detect now that background check records are destroyed before ATF can audit any dealer. This is not the only problem caused by destruction of these records. Nevertheless, destruction of these records is now required by statute.
WHAT SHOULD BE DONE?

“One of the most difficult challenges we face ... is preventing criminals from illegally obtaining guns and preventing those who do get them from using them. The issue of illegal guns is not conservative or liberal; it is an issue of law and order — and life or death.”

Mayor Michael R. Bloomberg, New York, New York
Mayor Thomas M. Menino, Boston, Massachusetts

Each of the flaws in Federal gun laws identified in the previous chapter could be readily addressed by making the simple, common sense changes outlined below. None of these changes would have any impact on the ability of law-abiding Americans to purchase firearms or use them for self-defense, target shooting, or hunting. However, each would have a significant benefit for public safety.

**STRENGTHEN ATF’S ENFORCEMENT POWERS**

Although ATF has long recognized that corrupt dealers are a major source of trafficked guns, the gun lobby has succeeded in persuading Congress to place severe limits on the Bureau’s authority to regulate licensed dealers and force corrupt dealers out of business. ATF needs to be freed from irrational constraints on its ability to protect the American people from illegal guns. This directly responds to the NRA’s argument that “we don’t need new laws; we need to enforce existing laws.” The argument is a fallacy, in part because new laws are needed to strengthen ATF’s enforcement ability.
Remove limits on ATF’s power to inspect gun dealers

In the Firearms Owners’ Protection Act, Congress, at the behest of the NRA, put severe limits on ATF’s enforcement authority, including a limitation of one unannounced enforcement inspection per year. ATF Director Steve Higgins testified before Congress in 1993 that this “limitation on ATF’s inspection authority enables unscrupulous licensees to conceal violations of the law.”\textsuperscript{152} This limitation should be repealed. Prior to 1986, ATF had the authority to conduct random inspections.\textsuperscript{153}

Reduce the burden on ATF necessary to revoke the licenses of corrupt dealers

Despite the fact that ATF inspections often reveal multiple violations of law by gun dealers, the revocation of a dealer’s license to sell guns is a rare event. In FY 2003, ATF did 1,812 inspections that uncovered 150,000 violations, with an average of over 80 violations per dealer.\textsuperscript{154} Despite this large number of dealers with multiple violations, ATF issued only 54 notices of license revocation that year. Recent increases in the number of revocations are still a tiny fraction of the number of dealers caught violating Federal gun laws, and may not be sustainable given ATF’s limited resources.\textsuperscript{155}

The limited number of revocations is, in part, to the Firearm Owners’ Protection Act, which imposed a requirement that ATF prove, in order to revoke a dealer’s license, that the dealer had “willfully” violated the law.\textsuperscript{156} This is a showing of evil intent normally reserved for criminal liability. The “willfulness” standard should be abolished and replaced with a requirement that the dealer “knowingly” violate the law. The gun industry’s claim that ATF has been overzealous in its enforcement actions against licensed gun dealers has been proven to be a myth.\textsuperscript{157}

Increase the penalty for violations of firearm recordkeeping laws

In the fall of 2002, John Muhammad and his juvenile cohort Lee Boyd Malvo paralyzed the Washington, D.C. area with a series of deadly sniper shootings. They obtained the assault rifle used in their killing spree from a Tacoma, Washington gun dealer named Bull’s Eye Shooter Supply.\textsuperscript{158} Yet, when ATF finally recovered the gun and traced it back to Bull’s Eye, the store had no record of having sold the gun.\textsuperscript{159} This was not the first time that guns “disappeared” from Bull’s Eye’s inventory. Several ATF audits of the store revealed that hundreds of guns were missing from inventory with no record of sale.\textsuperscript{160}

Despite the massive violations by Bull’s Eye Shooter Supply, neither the company nor its owner was charged with a criminal violation of Federal gun laws (although the owner’s license was revoked and he was prosecuted for tax law violations).\textsuperscript{161} The same is true for several other dealers recently
profiled in reports by the Brady Center – Valley Gun of Baltimore, Maryland, Trader Sports of San Leandro, California, and Lou’s Loans of Upper Darby, Pennsylvania. This is likely due to the fact that violations of firearm recordkeeping laws have been punishable only as misdemeanors, not as felonies, ever since Federal law was weakened in the Firearm Owner Protection Act. Given that these laws “are intended to deter the illegal transfer of firearms to prohibited persons,” their violation should be a Federal felony.

**Give ATF new authority to fine and suspend dealers**

When faced with a dealer that has violated the law, ATF only has the option of pursuing license revocation proceedings, which may take several years, or taking no action at all. ATF generally may not impose any civil fines or temporary license suspensions on gun dealers. Many dealers who commit crimes end up retaining their licenses for years. Indeed, under current law, a licensed gun dealer indicted for a felony can continue to sell guns until he is convicted and all of his legal appeals are exhausted. ATF should be given additional authority to fine or suspend licensees it believes have violated the law and, at the very least, should be able to suspend licensees once they have been convicted of a crime.

**Increase ATF staffing**

ATF’s enforcement efforts are limited by inadequate resources. The agency has essentially been forced to make do with the same staffing levels that it had in the 1970s. By comparison, the Drug Enforcement Administration has seen nearly a tripling of staff levels over the same time period. ATF’s inspection force is also restricted. The Department of Justice has estimated that, at its current rate of inspections, it would take ATF more than 22 years to inspect all Federal firearm licensees. Far more resources are needed to enable ATF to do its job.

**BAR LARGE-VOLUME SALES**

Gun traffickers keep costs down and maximize profits by buying large numbers of guns, usually handguns, from gun shops, often using “straw buyers” with clean criminal records allowing them to pass Brady Law background checks. Federal law enforcement authorities have long regarded the purchase of multiple handguns by a single buyer in a single transaction as a strong “indicator” that the buyer intends to traffic the guns to the illegal market. For this reason, if someone buys two or more handguns in a five-day period, Federal law treats the purchase as so suspect that it must be reported to ATF.

Multiple sales, however, are not illegal under Federal law and they continue to be a major source of supply for gun traffickers. In a particularly egregious recent example, a licensed gun dealer named Charles Brown sold hundreds of guns at Ohio gun shows to straw purchasers for gun trafficker James Bostic, including 87 handguns in a single transaction. Those guns were systematically trafficked from Ohio into New York State, where they have been used in dozens of crimes. Examples of people victimized by crimes involving multiple-sale guns include two New Jersey police officers that were shot with a gun sold as part of a 12-handgun sale by a West Virginia gun dealer, and a Philadelphia woman who lost her seven-year-old son to a gun trafficked from an upstate-Pennsylvania dealer.
Curbing large-volume sales is critical to reducing gun trafficking. Three states, California, Maryland and Virginia, have enacted laws restricting handgun purchases to one per month. A study of Virginia's law published in the Journal of the American Medical Association showed that prior to the law, 35 percent of all guns originating in the Southeast and traced in the Northeast came from Virginia gun shops. After the law took effect, that percentage dropped to 16 percent. However, because gun traffickers can simply use new “source” states, the ultimate solution is a Federal law.

**Give Law Enforcement and the Public Access to Crime Gun Data**

ATF's crime gun tracing program not only helps local police solve gun crimes, it also yields a massive amount of information about crime guns that helps law enforcement, and the public, understand how the illegal gun market is supplied. During the Clinton administration, ATF dramatically increased the volume of this data through its Youth Crime Gun Interdiction Initiative that encouraged major cities to trace every gun confiscated by police in connection with criminal investigations. The number of traces rose to more than 200,000 per year.

ATF long provided public access to various versions of its crime gun trace database. The information has been used by researchers and law enforcement to track gun trafficking patterns, assess the success of gun laws, identify the retail dealers contributing the most guns to the illegal market and the manufacturers and distributors who supply those dealers, and support lawsuits to hold the gun industry accountable for its role in supplying the illegal market.

Trace data has added greatly to the public's store of knowledge about the connection between retail gun dealers and the illegal market. For this reason, its release to the public has been quite threatening to the gun industry. As a result, at the urging of the gun lobby, Congress has attached a series of riders to Justice Department appropriations bills prohibiting ATF from disclosing trace data (and multiple sales data), even if the data is subpoenaed by a Federal court. It is essential that these restrictions be deleted from future appropriations bills.

**Retain Brady Background Check Records**

Since the Brady Act was signed into law by President Clinton in 1993, it has stopped 1.4 million convicted felons and other prohibited persons from buying guns from licensed retail dealers. Yet, despite its value in reducing criminal access to guns, the Bush administration and Congress have weakened the Brady Law by requiring the virtually immediate destruction of records documenting sales of guns to approved purchasers. This policy is seriously misguided, and serves to protect corrupt gun sellers, criminals, and potential terrorists.

Prior to the Bush administration, the Department of Justice retained background check records on approved gun sales for 90 days to
ensure that the NICS background check system was working properly and that criminals were not being mistakenly approved for gun purchases. Attorney General John Ashcroft, however, proposed shortening the period of NICS record retention to 24 hours, a change that was later enacted into statutory law as yet another Justice Department appropriations rider, and then implemented through a Justice Department regulation.

Citing his concern over the privacy of gun owners, Ashcroft ignored a GAO report that estimated that a change to a 24-hour destruction policy could result in hundreds of criminals, terrorists and other prohibited gun buyers being mistakenly approved for gun purchases. Without NICS records, law enforcement has no opportunity to retrieve these mistakenly-sold guns to protect against their use in crime. The Justice Department Inspector General also found that the 24-hour destruction policy makes it easier for corrupt dealers “to falsify the NICS check to hide a knowing transfer of a gun to a prohibited person.”

This dovetails with the findings of a recent study that dealers whose clientele are denied gun sales as a result of Brady background checks are much more likely to sell guns traced to crime than dealers without such clientele.

The Brady Act must be strengthened by allowing a reasonable time for record retention. If a Federal “one-handgun-a-month” law were enacted to ban multiple sales, such a record retention policy also would be needed to ensure that buyers are not able to circumvent the law by visiting several gun shops and buying single handguns at each shop.
CONCLUSION

In this report, we have seen dozens of examples that illustrate how licensed gun dealers supply the illegal market in firearms. In perhaps the most egregious case, a dealer in Ohio operating at a gun show sold 87 pistols to a gun trafficker and his female accomplice in a single transaction. Another Ohio dealer operating at the same gun show was also willing to supply this trafficker and his female accomplices with dozens of guns. Together, these two dealers supplied the trafficker with about 250 handguns that he resold to criminals, gang members, and other prohibited buyers on the streets of Buffalo. The willingness of these dealers to engage in such sales to blatantly illegal buyers set off a crime wave in Buffalo and surrounding areas. As of May 2005, police had linked these trafficked firearms to about 80 gun crimes, including homicides, attempted homicides, and robberies.\textsuperscript{188} No doubt that number has continued to grow.

This is just one example of how large-volume sales, sales to repeat customers, sales to in-store straw purchasing teams, multiple purchases of the same model gun, and sales to traffickers at gun shows, implicate licensed gun dealers as central players in supplying the illegal gun market. It takes two sides to consummate an illegal sale: a buyer and a seller. Unfortunately, the only side that has tended to receive scrutiny or punishment from ATF or Federal prosecutors has been the buyer.

If common sense were to prevail, Congress would take steps to enable law enforcement to crack down on both sides that are involved in the shady dealings described in detail in this report. There is no reason to prosecute gun traffickers, yet allow the gun dealers that sell them an almost endless supply of guns and profit handsomely from those sales to escape without any punishment whatsoever. For too long, gun dealers have received nothing but rewards for engaging in shady deals that supply the illegal market. Gun dealers need to face serious legal penalties for enabling trafficking to occur. They should not be able to continue supplying the illegal market as if there is nothing wrong with their conduct.
“LAWYERS FOR A SAFER AMERICA”: A LEGAL ALLIANCE TO PROTECT AMERICANS FROM GUN VIOLENCE

Who We Are. The Brady Center to Prevent Gun Violence’s Legal Action Project is the nation’s only public interest law group dedicated to fighting in the courts to reducing gun deaths and injuries. For over 20 years, we have defended crucial public safety laws, and reformed and exposed dangerous gun industry practices.

Rare Opportunity. We invite you to participate in an exciting new alliance of lawyers and law firms, Lawyers For A Safer America, that offers a rare opportunity to help establish a developing body of Constitutional law – and to help Americans protect their communities from gun violence.

Imminent Crisis. Together we will respond to a far-reaching gun lobby campaign that seeks to strike down gun laws and prevent Americans from effectively addressing our gun violence epidemic. Since the Supreme Court held that the Second Amendment protects a private right to guns, hard-fought gun laws have been challenged in over 500 cases, with more filed all the time.

Lives and Liberties at Risk. Every year in America about 100,000 people are shot, over 30,000 fatally. Every day eight children and teens are killed by guns. Over the next several years, courts will determine whether Americans may enact and enforce effective public safety laws that keep guns off the streets and out of the hands of dangerous people – and whether “gun rights” can infringe on basic rights of free speech and civil justice.

Our Work. Lawyers For A Safer America members will help defend gun laws, establish law that allows for effective public safety policies, reform dangerous industry practices that facilitate shootings, and develop legal and policy strategies to prevent gun violence. As the Brady Center is a 501(c)(3), contributions are tax deductible. Members will have the opportunity to:

- Play a key role in precedent-setting Second Amendment cases by assisting, advising and representing governments defending gun laws and filing amicus briefs;
- Challenge harmful laws that infringe on individual rights and governmental authority;
- Help victims and survivors of gun violence reform dangerous industry practices;
- Educate the public and policy makers about the constitutionality of strong gun laws;
- Participate in strategy sessions on cutting-edge strategies to prevent gun violence.