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# 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

Surveys of criminals indicate that “street or illegal sources,” family, and friends are the most common proximate sources for criminals to obtain guns (Webster et al., in this volume; Harlow 2004). However, there are little data on how guns are initially diverted into the illegal market and into the hands of direct suppliers for criminals. Data from gun trafficking investigations indicate that licensed gun dealers play an important role in the diversion of guns from the legal to the illegal market. Gun dealers facilitate blatantly illegal sales by straw purchasers (individuals who buy guns on behalf of prohibited purchasers), or sell guns to traffickers or directly to criminals (Bureau of Alcohol, Tobacco and Firearms 2000). Phone surveys of licensed gun dealers, in which callers asked whether the dealer would sell them a handgun intended for their boyfriend, found between 20% and 50% were willing to make what would have been an illegal sale (Sorenson & Vittes 2003; Wintemute 2010).

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Research has shown that gun dealers' sales practices can have a powerful effect on the illicit market. Although some licensed gun dealers rarely sell guns that are subsequently recovered from criminals, others have been identified as the origin of hundreds of crime guns in a given year (Americans for Gun Safety 2004; Wintemute, Cook, & Wright 2005). In Milwaukee, for example, a single gun dealer was linked to the majority of the city's crime guns which were recovered within a year of the first retail sale (Webster, Vernick, & Bulzacchelli 2006). In response to negative publicity about the gun shop's frequent connection to guns used in crime, that gun dealer voluntarily changed his shop's sales practices—including eliminating the sale of so-called "junk guns." This change was followed by an immediate 76% reduction in the flow of new guns from that gun shop to criminals in Milwaukee, and a 44% reduction in new crime guns citywide (Webster, Vernick, & Bulzacchelli 2006).

A recent study found that comprehensive state or local regulation of licensed gun dealers (e.g., state or local licensing, record-keeping requirements, mandating or allowing inspections) coupled with routine law enforcement compliance efforts was associated with less intrastate trafficking of guns (Webster, Vernick, & Bulzacchelli 2009). Litigation is another policy tool that has been used to deter gun sales practices which could enable criminals to obtain guns (Vernick, Rutkow, & Salmon 2007). Beginning in the late 1990s, several local governments began to sue gun manufacturers, wholesalers, and retail gun shops for engaging in sales practices that, according to the plaintiffs, facilitated the diversion of guns from the legal to the illegal gun market. In support of their claims that retail gun dealers were engaging in negligent sales practices which enabled criminals to obtain guns, the plaintiffs presented data from the United States Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) which indicated that a relatively small number of gun dealers had long histories of selling a large number of guns that police later recovered from criminals. Some cities, including Chicago and Detroit, initiated a series of undercover stings of gun shops in their area which were linked to the most crime guns. These stings involved undercover police officers posing as gang members and blatantly attempting to illegally purchase firearms using straw purchasers. The videotapes of these stings were presented as evidence in the lawsuits and, in the case of Chicago, were also used in criminal cases against individuals who broke state gun sales laws. A study which tracked illegal gun trafficking indicators over time found that the Chicago and

Detroit lawsuits were associated with significant reductions in the flow of new handguns to criminals. Guns recovered by police within a year of retail sale by an in-state gun dealer dropped 62% in Chicago and 36% in Detroit. There were no significant changes in gun trafficking indicators in three comparable Midwestern cities that had not sued local gun dealers (Webster et al. 2006).

As discussed in the essay by Jon Vernick et al. (in this volume), in 2005 a new federal law was enacted which made it much more difficult for individuals or municipalities to bring lawsuits against firearm makers and sellers. Under the Protection of Lawful Commerce in Arms Act (PLCAA), lawsuits against firearm manufactures or dealers “resulting from the criminal or unlawful misuse” of a firearm “by the person or a third party” may not be brought in state or federal court (15 U.S.C. §7903(A)(5) (2010)). Thus, if a city were to sue a gun dealer alleging harm caused by the criminal (i.e., “third party”) use of firearms in that city, the lawsuit would be dismissed unless one of the limited exceptions to the PLCAA applied. Even lawsuits pending at the time the PLCAA was enacted were to be “immediately dismissed.” As a result, nearly all lawsuits brought by cities against gun dealers and manufacturers were dismissed (Vernick, Rutkow, & Salmon 2007).

One exception to the PLCAA’s protection of the firearm industry involves lawsuits where the plaintiff can show that harm was caused by a firearm dealer or manufacturer who “knowingly violated a State or Federal statute applicable to the sale or marketing of the product . . .” (15 U.S.C. §7903(a)(5) (2010)). Under this exception, if the damages alleged in the lawsuit are associated with the knowing violation of a firearms sales law *by the defendant*—whether or not another criminal act, such as a homicide or assault by the gun buyer, was also involved—then the lawsuit may proceed.

This exception was used by New York City in its 2006 litigation against 27 gun dealers who were videotaped facilitating illegal straw gun purchases in undercover stings. This essay describes New York City’s use of litigation to compel these gun dealers to adopt new business practices designed to prevent the diversion of guns to criminals and other prohibited persons. It also presents data from 10 of the dealers who had maintained electronic sales records showing a dramatic reduction in the number of guns sold by these dealers that were subsequently recovered by the New York Police Department (NYPD).

## New York City's Lawsuits against Selected Gun Dealers

Following shooting deaths of two NYPD officers and the fatal shooting of a young child caught in crossfire, in 2006 New York City Mayor Michael Bloomberg made fighting illegal guns a top priority of his administration. The success of the undercover stings and lawsuits in Chicago and Detroit in reducing the flow of new guns to criminals encouraged New York City officials to undertake a similar effort. The city hired private investigators to stage and secretly videotape undercover stings of 55 gun dealers located across seven states that were among the most common source states for guns recovered by police from criminals and crime scenes in New York City. The seven states were Alabama, Georgia, North Carolina, Ohio, Pennsylvania, South Carolina, and Virginia. Some of the targeted gun dealers had also sold guns to individuals prosecuted for crimes related to gun trafficking.

All of the stings were conducted in a similar manner. A male and a female investigator entered the gun stores together. The male investigator engaged sales staff with questions about different firearms and selected one or more to purchase. The female investigator, who had not been involved in the selection of the gun, would then attempt to complete the federal form for a background check of prospective firearm purchasers. The male investigator would attempt to pay for the firearm and receive it from the sales person after the instant background check was completed. Transactions of this type violate federal firearms laws; this was acknowledged by many of the gun dealers who were stung and refused to make the sale.

Of the 55 gun dealers, 27 were caught facilitating illegal sales in the undercover stings and were sued by New York City. Nearly all of the dealers came to an agreement with the city to change their business practices to prevent illegal gun sales. As part of the settlements, a special master was appointed to ensure that each gun dealer complied with all applicable firearm sales laws. Gun dealers were required to allow the special masters to use in-store observation (including use of videotape surveillance); records monitoring, including: all crime gun trace requests made by ATF since the date of the settlement; inventory inspections; random and repeated sales integrity testing; and instructional programs designed to provide best practices sales training to all employees involved in firearms sales. Gun dealers were also required to file a performance bond with the Court that was considered by the city to be satisfactory. The performance bond required the gun dealer, usually within

15 days of its signing, to forfeit a designated amount of money to New York City anytime the special master found that the dealer sold a gun to a straw purchaser or violated other applicable gun sales laws and regulations. Evidence of such a violation could have resulted from an indictment against a straw purchaser indicating circumstances under which a reasonable person would have recognized that a straw purchase was occurring, observation of a straw purchase from reviews of videotape monitors, or a sale made to an investigator conducting a simulated straw purchase. The performance bond lasted until the special master certified that three consecutive years of full compliance by the gun dealership had occurred.

### Assessing Program Effects on the Diversion of Guns to Criminals

Electronic sales data for specific guns sold (i.e., make, model, caliber, serial number, date of sale) for the period from January 1, 2003 through June 30, 2007 were made available to the special master by 10 of the gun dealers sued by New York City. The special master shared the data with the New York City Law Department which then provided it to researchers. To ascertain whether any of the guns sold by these 10 dealers were subsequently recovered by NYPD, we obtained NYPD's database for firearms it recovered from criminals, crime scenes, and other settings from January 1, 2003 through June 30, 2008. The NYPD database contained data on manufacturer/make, model, caliber, and serial number for each gun as well as the date on which it was recovered. The gun sales and police recovery databases were subsequently merged. To identify guns that were sold by the 10 gun dealers of interest and later recovered by NYPD, we looked for matches based on make, caliber, and serial number.

The primary goal of the analysis was to compare the likelihood of NYPD recovery for guns sold before and after the lawsuits were announced. Guns sold during the pre-lawsuit period had much greater opportunity for NYPD recovery than guns sold after the lawsuits due to more follow-up time for the pre-lawsuit-sold guns compared with post-lawsuit sales. Guns sold prior to the lawsuit had from 25 to 66 months (mean = 43 months) of follow-up time, whereas guns sold after the lawsuits had 13 to 25 months (mean = 18 months) of follow-up time. Researchers were only provided sales data for 13.5 months following the announcement of the lawsuits and had between 12 and 25.5 months of follow-up time for police recovery data for post-lawsuit sales.

Therefore, we constrained the follow-up time for the pre-lawsuit-sold guns to make it roughly equivalent to that of the post-lawsuit cohort of guns. Specifically, we selected all guns sold during the 13.5 months immediately prior to the lawsuits for comparison with the post-lawsuit-sold guns. We then determined which of these guns had been subsequently recovered by NYPD, and if the recovery occurred within a follow-up time period that was within the bounds of the appropriate follow-up period for guns sold during the post-lawsuit period. For example, a gun sold on May 16, 2006—the first day following the announcement of the first lawsuits—had a follow-up time of 776 days during which recovery was determined. Similarly, a 776-day window of exposure was examined for guns sold on the first day of the pre-lawsuit cohort of gun sales (April 15, 2005). In contrast, post-lawsuit sales which took place on the last day for which gun sales data were available (June 30, 2007) had a maximum follow-up period of 365 days. We, therefore, constrained the follow-up period for guns sold on the last day prior to the lawsuits' announcement (May 14, 2006) to 365 days.

To test whether the odds of NYPD recovery for guns sold after the lawsuits were announced was different from the odds of NYPD recovery for guns sold before the lawsuits, we calculated the crude odds ratio, its 95% confidence interval, and Pearson's chi-square statistic. In addition, we performed a logistic regression to estimate the relationship between the time period in which a gun was sold (before lawsuits = 0; after lawsuits = 1) after controlling for the exposure or days of follow-up and a set of indicator variables for the specific dealer that sold the gun.

For the 10 gun dealers included in the study, we identified sales records for 12,267 guns—6,081 before the lawsuits and 6,186 after the lawsuits. The mean follow-up time for post-lawsuit-sold gun sales was slightly longer than that of pre-lawsuit-sold guns (565.7 versus 542.3,  $p < .001$ ). The number of recorded sales varied greatly across the 10 dealers from a low of 91 to a high of 2,337.

Only 5 of the 6,186 (0.008%) guns sold after the lawsuit were subsequently recovered by NYPD compared with 31 of the 6,081 (0.005%) guns sold during the period immediately before the lawsuit ( $\chi^2 = 19.28$ ,  $df = 1$ ,  $p < .001$ ). The odds of a NYPD recovery was 84.2% lower during the post-lawsuit sales period than the pre-lawsuit sales period (OR = 0.16, 95% CI: 0.02, 0.41). The adjusted odds ratio for NYPD recovery for post-lawsuits guns versus pre-lawsuits guns estimated from the logistic regression which controlled for follow-up time and dealer-specific effects (OR = 0.18, 95% CI: 0.07, 0.46) was similar to the crude

odds ratio indicating the odds a gun sold following the lawsuits was recovered by NYPD relative to the odds of a gun sold before the lawsuits was recovered by NYPD.

## Discussion and Policy Implications

This study has several limitations which restrict our ability to ascertain the full effects of the lawsuits and any subsequent changes in business practices resulting from the settlement agreements. First, we only had access to police gun recovery data for New York City. Most gun dealers sued by the city were located in many states that were hundreds of miles from New York including Georgia, Alabama, South Carolina, North Carolina, Virginia and Ohio. Although illegal gun markets vary across states, it seems likely that the new policies and practices instituted by the gun dealers to reduce the illegal diversion of guns to criminals would reduce the flow of guns to criminals within their home states as well as that of other states. Access to crime gun trace data from ATF would have allowed us to examine broader effects of the lawsuits; however, congressionally imposed restrictions on access to these data make such research extremely difficult if not impossible (Webster et al. 2012).

Agreements with the special master for the settlements against the gun dealers prevented us from knowing the identity of any of the dealers being studied. Knowing which dealers were included and the dates of the settlements would have allowed us to more precisely measure pre- and post-lawsuit periods. We believe that our estimates of the association between the lawsuits and probability of gun sales leading to subsequent recovery of the gun by NYPD are somewhat conservative because we assumed that any protective effects would be realized immediately following the announcement of the lawsuits against the first 15 gun dealers sued. Among the five post-lawsuit-sold guns later recovered by NYPD, one had been sold the day after the first lawsuits were announced and another was sold 10 days after the first lawsuits. Certainly, the agreements to institute an array of business practices designed to reduce the diversion of guns to criminals had not been reached or implemented within 10 days of the first lawsuits.

With the available data, it is impossible to determine the degree to which the sharp reduction in the risk of NYPD recovery following gun sales is due to the active oversight of the gun dealers by the special masters for their settlements or to new sales policies and practices. Marketing researchers have theorized



about and studied the countermarketing of products—rejection of unwanted demand by getting rid of undesirable customers or the prevention of risky transactions—that pose a special risk to consumers or the public at large if there is great risk of the product causing consumer or public harm if misused. They have found evidence of countermarketing effects among retail firearm sellers (Gundlock, Bradford, & Wilkie 2010). Walmart, the largest seller of firearms in the United States, has adopted a 10-point, voluntary code for responsible sales practices to prevent guns they sell from getting into the hands of criminals (Mayors Against Illegal Guns 2013).

The findings from our study are consistent with a growing body of research evidence which indicates that gun dealers' sales practices affect the probability of guns getting to criminals (Webster, Vernick, & Bulzachelli 2006), and that policies designed to hold gun sellers accountable can curtail the diversion of guns to criminals (Webster et al. 2009; Webster et al., this volume). Conversely, there is evidence that the federal policy which curtailed the use of crime gun trace data in lawsuits or in decisions about firearm dealers' licensure, so that gun dealers are less accountable, can increase the diversion of guns to criminals by problem dealers (Webster et al. 2012). While the current study focused narrowly on the effects of lawsuits—and presumably the gun sales reforms agreed to by the gun dealers—on the dealers who were sued, a prior study demonstrated citywide reductions in the flow of new guns to criminals in Chicago and Detroit following undercover stings and lawsuits against area gun dealers (Webster et al. 2006). These findings suggest that, to prevent the flow of large numbers of guns to criminals, policymakers should eliminate special protections for gun dealers from lawsuits and law enforcement oversight.

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