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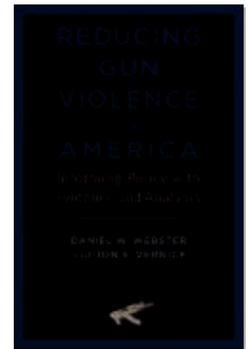
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Enforcing Federal Laws against Firearms Traffickers

Raising Operational Effectiveness
by Lowering Enforcement Obstacles

Anthony A. Braga and Peter L. Gagliardi

Research suggests that only about one of every six firearms used in a crime was obtained legally (Reiss and Roth 1993) and that most serious gun violence is committed by a relatively small number of very active criminals (Braga 2003; Cook, Ludwig, and Braga 2005). Clearly, the United States has a large problem with the illegal acquisition of guns by high-risk individuals who should not have access to them. Criminal demand for guns is influenced by a number of factors such as fear of victimization and status concerns, technological concerns (e.g., concealment, caliber), and economic concerns (e.g., affordability) (Sheley and Wright 1995; Wright and Rossi 1994). While semi-automatic assault rifles have been misused in some high-profile tragedies, such as the horrific school shooting in Newtown, Connecticut, handguns are most frequently recovered in crime by law enforcement agencies (Cook, Braga, and Moore 2011).

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One broad class of gun control policy instruments are those designed to influence who has access to different kinds of firearms (Braga, Cook, et al. 2002; Cook, Braga, and Moore 2011). In essence, these “supply-side” interventions seek to reduce gun crimes by keeping guns out of the wrong hands without denying access to legitimate owners or infringing on legitimate uses of guns. In maintaining legal firearms commerce for law-abiding citizens, there is the serious problem of preventing illegal transfers. That prevention currently is being handled very poorly. Loopholes in existing gun laws weaken accountability of licensed gun dealers and private sellers; this facilitates illegal transfers by scofflaw licensed gun dealers, generates difficulty in screening out ineligible buyers, and, most important, results in a vigorous and largely unregulated secondary market—gun sales by private individuals—in which used guns change hands (Cook, Molloconi, and Cole 1995).

Unfortunately, no rigorous field experiments have tested whether supply-side strategies would reduce criminal gun acquisition and use. While guns used in crimes are stolen from legal owners, the available scientific evidence suggests that a noteworthy portion of crime guns are illegally diverted from legal commerce. Research also suggests that supply-side interventions have promise in limiting criminal access to firearms. A key element of supply-side interventions involves the investigation, apprehension, and prosecution of illegal gun traffickers and others who illegally divert guns to criminals. Unfortunately, the investigation of illegal gun traffickers is hampered by a variety of enforcement obstacles.

In this essay, we briefly review the available research on the workings of illegal gun markets and the potential efficacy of supply-side interventions designed to disrupt the flow of illegal guns to criminals. We then make policy and legislative recommendations to improve the enforcement of federal firearms laws against gun traffickers.

Evidence

Much of the evidence in support of supply-side interventions comes from analyses of U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) firearm trace data and firearms trafficking investigations that indicate some percentage of the guns used in crime were recently diverted from legal firearms commerce (ATF 1997, 2000, 2002; Braga, Wintemute et al. 2012; Cook and Braga 2001; Pierce et al. 2004). Firearm tracing makes it possible, at least in principle,

to determine the chain of commerce for a firearm from the point of import or manufacture to the first retail sale (and beyond, in states that maintain records of gun purchases). Unfortunately, not all firearms can be traced and firearm trace data have some widely recognized limits. The National Academies' Committee to Improve Research Information and Data on Firearms, however, suggests that the validity of conclusions drawn from firearm trace data research depends on the care taken in the application and analyses of these data (National Research Council 2005).

Among the main findings of these research studies are (1) new guns are recovered disproportionately in crime (Cook and Braga 2001; Pierce et al. 2004; Zimring 1976). (2) Some licensed firearm retailers are disproportionately frequent sources of crime guns; these retailers are linked to more guns traced by ATF than would be expected from their overall volume of gun sales (there could be many reasons for these patterns; see Wintemute 2005). (3) Under test conditions, significant proportions of licensed retailers and private party gun sellers will knowingly participate in illegal gun sales (Sorenson and Vittes 2003; Wintemute 2010). (4) On average, about one-third of guns used in crime in any community are acquired in that community, another third come from elsewhere in the same state, and a third are brought from other states (ATF 1997, 2002; Cook and Braga 2001). (5) There are long-standing interstate trafficking routes for crime guns, typically from states with weaker gun regulations to states with stronger ones. The best known of these is the "Iron Pipeline" from the Southeast to the Middle Atlantic and New England (Cook and Braga 2001; Pierce et al. 2004).

Analyses of ATF firearm trafficking investigation data reveal that illegal gun traffickers exploit an incredibly leaky legal firearms commerce system. For instance, a 2000 report examining 1,530 gun trafficking investigations made by ATF between July 1, 1996, and December 31, 1998, found that more than 84,000 firearms were diverted from legal to illegal commerce (ATF 2000). The report identified the primary gun trafficking pathways as scofflaw and negligent firearms dealers, "straw man" legal purchasers who provide guns to criminals, and illegal diversions through secondary market sources such as gun shows, flea markets, and want ads. The analysis also revealed the organized theft of firearms from licensed dealers, common carriers, and residences as illegal diversion pathways. Moreover, ATF (2000) found that 61 percent of the cases involved the diversion of twenty or fewer firearms, and it concluded that most but not all gun trafficking investigations involve a relatively

small number of firearms. The two largest gun trafficking cases involved the illegal diversion of some 11,000 and 10,000 firearms, respectively.

While survey research highlights the importance of theft and secondary market acquisitions in supplying adult criminals and juveniles with guns, these studies also complement analyses of firearm trace and investigation data in suggesting a fairly substantial role, either direct or indirect, for retail outlet sales in supplying criminals with guns. About 27 percent of state prisoners in a U.S. Bureau of Justice Statistics survey said they acquired their most recent handgun from a retail outlet (Beck and Gilliard 1993). Similarly, Wright and Rossi (1994) reported that 21 percent of male prisoners had acquired their most recent handgun from a licensed dealer. Sheley and Wright (1995) found that 32 percent of juvenile inmates had asked someone, typically a friend or family member, to straw purchase a gun for them in a gun shop, pawnshop, or other retail outlet. All three survey studies also found that “street” and “black market” sources are important, sources that may well include traffickers who are buying from retail outlets and selling on the street.

Despite multiple illegal sources of firearms for criminals, ethnographic research suggests that illegal gun markets may not work well in particular urban environments. Cook, Ludwig, and Braga (2005) found evidence of considerable frictions in the underground market for guns in Chicago. These frictions existed mainly because the underground gun market was both illegal and “thin”—the number of buyers, sellers, and total transactions was small, and relevant information on reliable sources of guns was scarce. The research further found that Chicago street gangs helped to overcome these market frictions, but the gangs’ economic interests caused gang leaders to limit their supply primarily to gang members, and even then transactions were usually loans or rentals with strings attached. Thin underground gun markets may be particularly vulnerable to focused gun market disruption strategies.

A growing body of evaluation evidence suggests that enforcement and regulatory interventions focused on retail sales practices can generate subsequent reductions in new guns recovered in crime. In Detroit and Chicago, the number of guns recovered within a year of first retail sale from someone other than the original purchaser was sharply reduced after undercover police stings and lawsuits targeted scofflaw retail dealers (Webster, Zeoli, et al. 2006). In Boston, a gun market disruption strategy that focused on the illegal diversion of new handguns from retail outlets in Massachusetts, southern states along Interstate 95, and elsewhere resulted in a significant reduction in

the percentage of new handguns recovered in crime by the Boston Police Department (Braga and Pierce 2005).

In Milwaukee, the number of guns recovered within a year of first retail sale from someone other than the original purchaser dramatically decreased after voluntary changes in the sales practices of a gun dealer that received negative publicity for leading the United States in selling the most guns recovered by police in crime (Webster, Vernick, and Bulzacchelli 2006). In Chicago, an analysis of recovered crime handguns found that the 1994 implementation of the Brady Handgun Violence Prevention Act was associated with a marked decrease in crime handguns imported from states that were required to institute the provisions of the Act (Cook and Braga 2001). The Brady Act mandated licensed dealers to conduct a criminal background check on all handgun buyers and required a one-week waiting period before transferring the gun to a criminal.

Policy Implications

Research suggests that supply-side interventions could be used to good effect in reducing the illegal supply of firearms to criminals. It is the responsibility of ATF, often working with state and local law enforcement, to investigate criminal firearms trafficking, arrest the perpetrators, and refer them to U.S. Attorneys for prosecution. Unfortunately, some major obstacles hinder federal law enforcement efforts to hold gun traffickers accountable for their crimes (Braga 2001). ATF is essentially working with one hand tied behind its back because of the way the federal firearms laws are written, cuts to its operating budgets, and persistent political interference. Here, we make six policy and legislative recommendations to improve the capacity of the U.S. Department of Justice to enforce federal laws against gun traffickers. This list should not be considered exhaustive as other opportunities certainly exist.

1. *Require the Execution of Private Sales through Federal Firearms Licensees.* The lack of background checks and transaction paperwork in the secondary market makes it easy for prohibited persons to acquire firearms and difficult for law enforcement agencies to prevent, detect, and prosecute illicit buyers and sellers who operate in the secondary market. Secondary market transactions are legal but not subjected to any federal requirement that the transaction be formally recorded or paperwork maintained. Most states do not have laws that require a record of secondary market transactions. The

main federal legal requirement is that the private seller may not knowingly transfer firearms to proscribed persons such as felons, fugitives, drug users, and illegal aliens. The provisions of the 1994 Brady Act do not apply to secondary firearms market transactions; therefore, criminal background checks of the prospective buyer are not conducted during these private transactions. Requiring private sales to be executed through federally licensed gun dealers would effectively close a major legal loophole exploited by gun traffickers and criminals. As part of these reforms, mandatory reporting of multiple purchases of handguns should be extended to include multiple purchases of certain long guns (e.g., semi-automatic rifles capable of accepting high-capacity magazines), similar to current practices in states along the southwest border of the United States with Mexico.

The enforcement of laws against gun trafficking is also hindered by the cumbersome procedure ATF uses to trace firearms. Most of the relevant firearms transaction records are not centralized but kept piecemeal, much in paper form, by the dealers, distributors, and manufacturers. This arrangement reflects the intention of Congress to ensure that there would be no national registry of firearms owners while maintaining some mechanism to allow crime investigators to trace a firearm. Modest changes to the system could make a big difference (Travis and Smarrito 1992). For example, a requirement for licensed dealers to report serial numbers for all gun transfers to ATF would greatly facilitate the tracing process without creating a central registry of gun owners. Electronic exchange of this information by means of a web portal would significantly expedite the process.

2. *Enact Effective Firearms Diversion/Trafficking Statutes.* There are no federal laws that specifically prohibit firearms trafficking and that adequately reflect the public safety risks of straw purchasing of weapons. For instance, there are no defined elements of gun trafficking in existing federal statutes such as the identification of a threshold number of illegally diverted guns and the establishment of a nexus to criminal activity. While there are nearly 40 federal statutes that touch on the various relevant areas of the illegal diversion of firearms (see ATF 2009), ATF agents commonly rely upon two statutes when investigating gun trafficking crimes: engaging in the business of dealing firearms without a license (Title 18, Section 922(a)(1)(A)) and falsifying the ATF Form 4473 (Title 18, Section 922(a)(6)).

The 1986 McClure-Volkmer Firearm Owners' Protection Act (FOPA) makes it very difficult to prosecute gun traffickers for dealing firearms without a

license. Individuals who make occasional gun sales, buy guns as a hobby, or sell firearms from their private collections are exempt from acquiring a federal firearms license. Gun traffickers exploit this gaping hole in licensing law to illegally divert guns to criminals and juveniles. Since the telltale paperwork is not available for these unregulated transactions, firearms traffickers operating in the secondary market can easily avoid prosecution by claiming that they were selling only a handful of firearms from their private collection. Although federal law penalizes individuals who make false statements on firearms transfer paperwork, it is difficult for ATF agents to prove that straw purchasers are falsifying paperwork, purchasing firearms for proscribed persons rather than buying firearms for their personal collections and subsequently selling them lawfully on the unregulated secondary market. The problem is compounded because document falsification violations are seldom viewed by prosecutors as appealing cases to bring before a jury.

A telling analysis of the disposition of 1,530 ATF firearms trafficking investigations suggests that prosecuting unlicensed dealers for engaging in the business of selling firearms and for straw purchasing presents a significant challenge in court (ATF 2000). Although ATF agents reported that dealing without a license and falsifying paperwork violations were occurring in cases accepted for prosecution, the prosecutor was able to charge at least one defendant with these violations in less than 38% of cases involving dealing without a license and less than 45% of the straw purchasing cases. In these cases, defendants were charged with being a convicted felon in possession of firearms, drug offenses, or other crimes revealed during the investigation.

3. *Revisit Sentencing Guidelines for Firearm Diversion/Trafficking Crimes.* Penalties for the illegal diversion of firearms should reflect the serious public safety consequences of these crimes. Since guns are durable goods, even one illegal gun can have repetitive and dire consequences. For instance, ballistic imaging analysis of a single handgun recovered by the Boston Police Department revealed that, in one year, it had been used in 14 violent crimes across four cities in two states (Gagliardi 2010). Prosecuting scofflaw dealers, who are associated with the illegal diversion of multiple guns, is often frustrating for U.S. Attorneys and ATF investigators. For instance, corrupt licensed dealers illegally divert firearms through record keeping violations such as making false entries in their records and failing to keep the required transfer information. Although a corrupt licensed dealer may illegally divert hundreds of guns to the street, these record keeping violations are primarily misdemeanors.

Gun traffickers are often prosecuted for associated criminal conduct because trafficking charges are difficult to prove and sometimes carry lesser penalties when compared to other crimes such as being a felon in possession of a firearm or drug trafficking (ATF 2000). One quarter of firearms traffickers in the ATF analyses were charged with being a convicted felon in possession of a firearm and another 6% were charged with other prohibited persons charges. More than 27% were charged with conspiracy charges and over 12% were charged with a narcotics violation. Gun trafficking investigations are sometimes prosecuted as drug trafficking cases because prosecutors prefer the mandatory minimum sentencing provisions. For instance, using a firearm during the commission of a drug trafficking or violent crime (Title 18, Section 924(c)) carries a mandatory five-year imprisonment sentence.

Most gun criminals, unfortunately, do not have prior felony convictions (Greenfeld and Zawitz 1995). Corrupt licensed dealers and individuals who execute straw purchases are legally entitled to engage in firearm transfers and, by definition, not felons or drug abusers. Therefore, although prosecutors and ATF agents are creatively using the existing federal laws to make cases against gun traffickers, this type of prosecution strategy clearly has its limits.

4. *Develop and Implement Regional Crime Gun-Processing Protocols.* Gun crime investigations are seriously undermined when local jurisdictions do not comprehensively process all recovered crime guns and related evidence (see IACP 2011). Without these comprehensive data, federal, state, and local agencies are not able to develop an accurate assessment of the sources of illegal guns and their use in violent crime. Law enforcement agencies at the local, state, and federal level should conduct a thorough review of their internal directives on the processing of the crime guns and related evidence. Policy procedures should include processing for ballistic evidence as well as DNA, latent fingerprints, and trace evidence from firearms; processing projectiles and casings through the ATF National Integrated Ballistics Information Network (NIBIN); conducting firearms traces; and reporting to the National Crime Information Center (NCIC) (see Gagliardi 2010). The various law enforcement agencies operating within a given region should collaborate on the design of mutually agreeable crime gun-processing protocols.

5. *Create a Strong and Effective ATF.* ATF is underfunded, often without stable leadership, and routinely whipsawed by special interests and Congress. Despite the number of gun dealers having reached nearly 130,000 federal licensees, ATF's budget has been largely stagnant, increasing from \$850 million in FY

2002 to only \$1.1 billion in FY 2012. ATF had to eliminate more than \$2 million in field contractor support and shut down 66% of its ballistic-imaging workstation sites across the United States for its NIBIN program in FY 2012. ATF has only some 2,500 special agents and roughly 800 inspectors. In terms of law enforcement personnel, the agency is roughly the same size as a city police department (the Boston Police Department has an authorized strength of some 2,250 officers). ATF has only enough inspectors to check every licensed firearms dealer once every ten years. Finally, ATF has been led by an acting director since the last confirmed director, Carl Truscott, resigned in August 2004.

In their roles as guardians of the Second Amendment, the National Rifle Association (NRA) and gun-rights politicians consistently meddle in ATF investigative initiatives. For instance, in February 2006, Congress convened two hearings on ATF's enforcement activities at eight gun shows in Richmond, Virginia, that resulted in an Inspector General's review of ATF's gun show investigation operations. Four witnesses testified that ATF agents used aggressive and harassing techniques. These individuals included the gun show promoter, a federal firearms licensee, a salesman working for a licensed gun dealer, and a private investigator hired by the NRA. The hearings did not reveal any illegal activities or other violations by ATF.

ATF needs to be properly funded to perform its mission now and in the future as newly mandated responsibilities are added. The agency clearly needs stable leadership now. Like the director of the Federal Bureau of Investigation, the ATF director's position should be a fixed ten-year term. This would ensure that the position is professional and nonpartisan and that it spans the political turnover of four-year presidential election cycles. ATF should also be able to more closely regulate the business practices of licensed dealers and set standards for secure storage and common carrier transportation of firearms and ammunition.

6. *Publish an Annual National Crime Gun-Tracing Report.* Rational debate on gun policy requires detailed information on crime guns. ATF currently produces only modest summaries of the characteristics of crime gun traces for the 50 states, the District of Columbia, U.S. territories, Canada, Mexico, and the Caribbean (www.atf.gov/statistics/index.html). Unlike the national and city-level trace reports generated by the now-defunct Youth Crime Gun Interdiction Initiative (e.g., ATF 1997, 2002), ATF's current state-level crime gun summaries do not involve external academics and do not provide more rigorous and detailed analyses of crime gun sources, trends, and patterns.

ATF should return to publishing these more detailed annual crime gun trace reports overseen by external academics.

To complement the routine reporting of detailed crime gun statistics, the U.S. government should also lift restrictions on the release of ATF trace data as mandated by the Tiahrt Amendment, remove ideological and politically motivated barriers to conducting basic gun research through grants from the Centers for Disease Control and Prevention (CDC) and the National Institutes of Health (NIH), and increase funding for gun violence reduction research through the National Institute of Justice (NIJ). Indeed, much of the research evidence reviewed here was initiated prior to the passage of the Tiahrt Amendment.

Conclusion

The available evidence suggests that reducing the flow of guns to criminals may indeed disrupt their capacity to kill. Better record keeping and improved regulation of gun transactions can reduce access to guns by criminals and assist law enforcement agencies in launching investigations and prosecuting gun criminals. However, a measurable impact on firearms trafficking and related violence requires an adequate commitment of resources in terms of people, processes, and technology. For further gains, the firearms supply chain must be made more secure. The operational capacity of ATF must be strengthened. Success against firearms trafficking will be achieved only by separating firearms trafficking strategy from gun politics.

Reflecting upon the research and development experiences from the Clinton administration and early days of the George W. Bush administration, we suggest there should be a reinvigoration of the fusion of all-source information on crime gun sources along with comprehensive analysis and reporting, in which all sides of the gun control debate can be confident. Increased law enforcement–academic analysis and reporting of ATF firearms trace can begin the effort. Public safety and the public debate in the United States and other countries will surely benefit from the best possible information on the illegal sources of guns to criminals. Without credible data and rigorous analyses, the broader gun control policy debate will be based on ideology and conjecture. The case for a supply-side approach to gun violence is well supported by the empirical evidence on illegal gun market dynamics. To date, however, there is little empirical evidence that such an approach reduces rates of gun crime. We believe that

it is time to develop experimental evidence on whether interventions designed to limit illegal transfers of firearms can reduce gun violence.

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