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REGULATING GUN MARKETS*

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I. INTRODUCTION

With the rapid increase since the mid-1980s in rates of homicide and other criminal violence, crime has emerged as the nation's leading domestic problem. One tactic for mitigating lethal violence is gun control—government regulation of the production, exchange, and use of personal firearms. A number of proposals are currently being debated at the federal, state, and local levels. Recently, Congress enacted the Brady Bill and adopted a partial ban on assault weapons, while the Bureau of Alcohol, Tobacco and Firearms (BATF) toughened sales procedures for gun dealers.¹ A central issue in debating these and other control measures is which types of regulation are likely to be most cost-effective in reducing gun violence.

This Article concerns the secondary gun market, one of the key issues in understanding the potential effectiveness of gun control measures. The primary objective of much of the gun control effort in the United States is to discourage certain categories of people, including felons and those under indictment, from obtaining and possessing guns, while preserving ready availability of guns for everyone else.² To

* The research reported in this Article was sponsored by the Harry Frank Guggenheim Foundation and Duke University. A number of people have been helpful to us and require special thanks. Joel Rosch of the SBI and Bill Bridgewater of the National Alliance of Stocking Gun Dealers Association both served as important guides in understanding gun control issues. A handful of other law enforcement officers from BATF and local police departments were also instructive guides. The local police and sheriff departments committed substantial efforts to filling out our questionnaires; we especially appreciate the efforts of Tom Moss and the Garner Police Department. Most of all we appreciate the help of the ten students from C.A. Dillon School who agreed, with their parents, to be interviewed and then gave substantive answers to Stephanie's questions. We thank the Dillon School officials for their help in organizing these interviews.

¹ See The Brady Handgun Violence Prevention Act, 18 U.S.C. §§ 921-22 (1994); The Public Safety and Recreational Firearms Use Protection Act, Pub. L. No. 103-322, 108 Stat. 1807 (codified as amended in scattered sections of 42 U.S.C.); 27 C.F.R. § 178 (1995).

² See Philip J. Cook & James Blöse, *State Programs for Screening Handgun Buyers*, 455 ANNALS AM. ACAD. POL. & SOC. SCI. 80 (1981).

this end, federal law bans mail order shipments to everyone except licensed dealers and requires licensed dealers to screen customers for eligibility.³ However, dealers are not well-regulated and used guns can be readily purchased from other sources. Both of these issues undercut the discrimination strategy for reducing gun violence. Our research is concerned with developing a better understanding of gun markets, particularly the secondary, largely unregulated markets that supply youths and criminals with a large percentage of their guns. We seek to identify promising tactics by which regulatory and law enforcement agencies may better enforce the prohibition on purchase and possession by proscribed groups.

This Article provides a summary of the existing literature on gun markets and presents a year-long data-collection effort to develop an empirical description of gun markets as they operate in the Triangle area of North Carolina.⁴ We arranged meetings with local law enforcement officers, State Bureau of Investigation (SBI) personnel, BATF officers, and ten incarcerated delinquents to learn about local gun transactions.⁵ To collect data on gun theft in the area, we surveyed law enforcement agencies, and, when necessary, visited the agencies to pull data directly from the original crime reports. We attended a gun show and observed the guns offered for sale and the characteristics of the transactions that occurred. We also collected newspaper accounts from across the country to help piece together a picture of gun markets.

When we began, we expected that state and local law enforcement agencies and the local office of the BATF could provide us with information about illicit gun markets. However, we found that no agency investigates and disrupts the local gun markets that supply youths and criminals with guns. Even a small effort in this area would be a useful beginning.

Section II of this Article provides background on gun ownership and gun use in crimes in the United States. Section III reviews the federal and state systems regulating the distribution of guns, pointing to major loopholes in these systems. Section IV details the distinction between the primary and secondary markets for firearms and discusses the linkages between them. Federally licensed firearm dealers

³ 18 U.S.C. § 922 (1994).

⁴ The Triangle area of North Carolina is comprised of Wake, Durham, and Orange Counties and includes the cities of Raleigh, Durham, and Chapel Hill. Total population: 699,066 in 1990. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, 1990 CENSUS OF POPULATION AND HOUSING: POPULATION AND HOUSING UNIT COUNTS—UNITED STATES 640 (1993).

⁵ The Appendix contains a summary of findings from our interviews with youth offenders and is available from the authors.

are discussed in Section V, with examples of dealers who use their licenses to distribute guns illegally, together with an assessment of the prospects for improving the regulation of these dealers. Section VI focuses on theft as a source of guns for the illegal sector and on the redistribution of stolen guns; we also discuss possible interventions to reduce gun theft. Section VII details secondary firearm markets, where guns are bought and sold without the benefit of a licensed dealer or the paperwork that provides an official record of the transaction. Section VIII notes the extraordinary lack of intelligence data on the workings of the gun markets and suggests proposals for future research and regulation.

II. BACKGROUND: GUNS AND CRIME

Violent crime emerged in the last few years as the most prominent domestic problem facing the nation. The homicide rate, which declined 23% between 1980 and 1985, climbed in 1991 almost to the 1980 level.⁶ What is remarkable about this recent surge of violence is the extent to which it has been concentrated in a rather narrow segment of the population—youths in their teens and twenties, especially African-American, male youths.⁷ Figures 1 and 2 depict these trends. The already high homicide victimization rate for African-American males age fifteen to twenty-four doubled in six years. Meanwhile, both African-Americans and whites over age thirty-five have experienced a continuing decline in homicide rates since 1980.⁸

Developing a comprehensive explanation for these puzzling trends is beyond the scope of this Article. But several additional facts clarify these trends. First, most victims are killed by people who have similar demographic characteristics; and the demographic trends in homicide-arrest rates are similar to trends in victimization.⁹ Second, guns are used in two-thirds of criminal homicides, and over 80% of male homicide victims aged fifteen to twenty-four die of gunshot wounds. During the past twenty years, firearm homicides accounted for virtually all the rapid increase in the homicide rate for young, African-American males, as shown in Figure 3.

Youths appear to have easy access to guns. Over half the respondents in one representative sample of students in grades seven

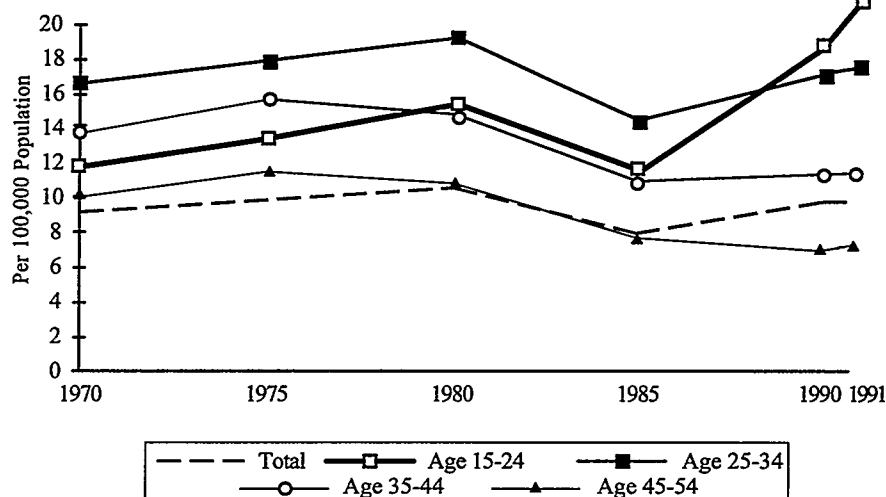
⁶ Our sources for these data are annual volumes reporting detailed statistics on mortality: e.g., U.S. NAT'L CENTER FOR HEALTH STATISTICS; U.S. DEP'T OF HEALTH AND HUMAN SERVICES; VITAL STATISTICS OF THE UNITED STATES, MORTALITY, PART A (1980).

⁷ See JAMES ALAN FOX, CHILDREN ARE SLAIN BY THEIR PARENTS AND TEENAGERS BY THEIR PEERS 1-3 (1993).

⁸ *Id.*

⁹ *Id.*

Figure 1
Homicide Rate



NCHS data

through twelve said they could get a handgun if they wanted one, including 62% of the respondents who lived in central cities.¹⁰ More remarkable is that 15% of these youths said they had carried a handgun on their person in the previous thirty days.¹¹ While there are no comparable statistics from earlier years, these results indicate that guns are now as prevalent in the cities as they have been in rural areas. The difference is that the cities have much higher rates of criminal violence.

While the widespread availability of guns in urban areas is not a "root cause" of violent crime, it significantly adds to the deadliness of that violence.¹² Effective control over the distribution of guns would have little effect on the volume of assaults and robberies, but it would reduce the homicide rate.

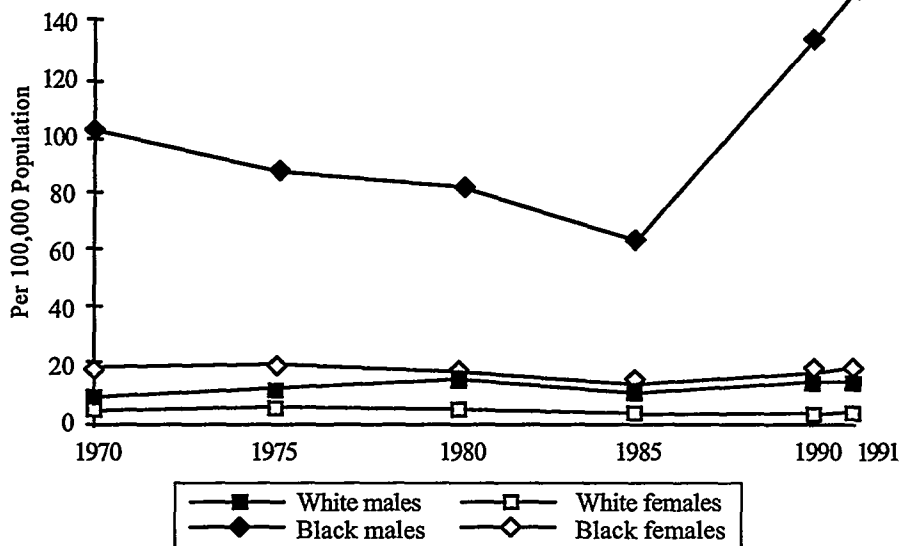
Guns are extremely durable, and some of the guns used in crime have been in the possession of the shooter for years or even decades. Effective regulation of guns already in private hands seems a difficult task. But on the basis of available evidence, we conclude that *most* guns used in crime, especially by youths, are not those that have been

¹⁰ See LOUIS HARRIS, *A SURVEY OF EXPERIENCES, PERCEPTIONS, AND APPREHENSIONS ABOUT GUNS AMONG YOUNG PEOPLE IN AMERICA* (1993).

¹¹ *Id.*

¹² See Philip J. Cook, *The Technology of Personal Violence*, 14 CRIME & JUST. 1, 47 (1991).

Figure 2
Homicide Rates for Ages 15-24



NCHS data

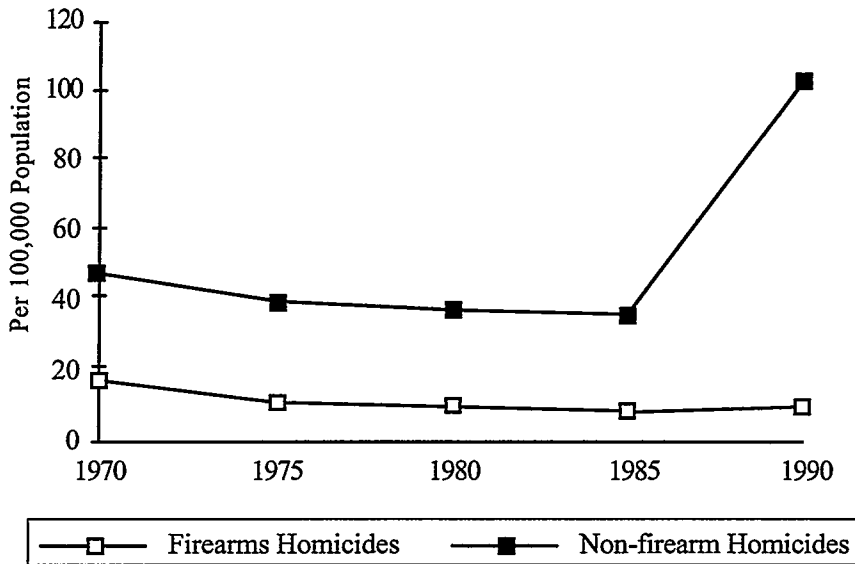
kept in the same dresser drawer for the last decade, but have been acquired relatively recently.¹³ An effective transfer-regulating scheme that prevents guns from going to dangerous people would be nearly as successful as a much more intrusive scheme targeted at current gun owners.

Each new cohort of violent criminals must obtain guns somewhere. Many delinquent youths are active in the gun market as both buyers and sellers, and they acquire guns by borrowing and stealing them.¹⁴ While we have no systematic data on the average lag between acquisition of a gun and its use in a crime, logic suggests that the lag cannot be longer than a few months for youthful offenders, and it may be only a few weeks.

¹³ For evidence that relatively new guns are used disproportionately in crime, see Franklin E. Zimring, *Street Crime and New Guns: Some Implications for Firearms Control*, 4 J. CRIM. JUST. 95 (1976). Several surveys of criminally active populations indicate that the typical pattern for those who use guns is to steal, buy, borrow, sell, and otherwise exchange them frequently. See, e.g., JAMES D. WRIGHT & PETER H. ROSSI, *ARMED AND CONSIDERED DANGEROUS: A SURVEY OF FELONS AND THEIR FIREARMS* (1986); JOSEPH F. SHELEY & JAMES D. WRIGHT, *NATIONAL INSTITUTE OF JUSTICE, U.S. DEP'T OF JUSTICE, GUN ACQUISITION AND POSSESSION IN SELECTED JUVENILE SAMPLES* (1993).

¹⁴ See James D. Wright et al., *Kids, Guns, and Killing Fields*, SOCIETY, Nov.-Dec. 1992, at 84.

Figure 3
Firearm Homicide Rate for Black Males Age 15-19



NCHS data

In trying to understand gun markets and how they relate to criminal activity, it is useful to consider that guns have value in exchange as well as in use. For someone living a chaotic life without a regular address or source of income, a gun may serve as an important store of value that can be readily exchanged for other goods and services. A youth who purchases or steals a gun may hold on to it for a few weeks and then decide that he needs money—or drugs—more than a gun, at which point he will find a ready market among his peers. Alternatively, the gun may be stolen from him, or he may loan it to a friend and not replace it for a while. One interesting statistic from a survey of inner-city, male, high-school students indicates that over one quarter of respondents who had ever owned a gun (8% of the total) currently did not own one.¹⁵

We interviewed ten boys with extensive records of criminal activity.¹⁶ We asked about the number of guns they had prior to coming to the school. All had owned at least one, and seven had possessed more

¹⁵ *Id.*

¹⁶ Stephanie Molliconi conducted these interviews on three days in April 1994 at the C.A. Dillon School in Butner, North Carolina. Due to a promise of confidentiality, no names or titles will be cited. See the Appendix (available from the authors) for a more complete account of what the boys said.

than ten guns during their brief criminal careers. Even so, several admitted there were times when they had been without a gun. One interviewee said, "I didn't have guns for awhile because I was chilling out. I didn't want anything to do with guns. I sold some, then gave some away to friends." Another said, "I didn't have a gun once for three months because I lent my gun to my cousin to use." They commented on the value of a gun in trade. One indicated, "When [people] are short on money they have no choice but to sell."¹⁷ Comments by Interviewee 9 helped remind us that these were still just kids: "I've had about twenty guns. I traded a .22 for a Super Nintendo and some other guns for a VCR and for my waterbed. I got other stuff for my room, like a phone with lights and a copy [fax] machine for a twenty-gauge."¹⁸

Regulating gun transfers appears to be a promising method of keeping guns from the hands of youths and criminals or, at least, of limiting the time that they are armed. When guns are relatively scarce and expensive, youths may be slower to acquire a gun and quicker to sell it.

III. BACKGROUND: REGULATING GUN TRANSFERS

The government regulates the manufacture and distribution of guns to reduce gun violence and enacts and enforces these regulations under heavy influence from the traditional and arguably constitutional right to keep and bear arms for sport and self-defense. Therefore, rather than responding to the gun problem through a blanket prohibition or high taxes,¹⁹ federal and state governments have sought to limit misuse while preserving legitimate uses.²⁰ A few types of guns are prohibited, while most are not.²¹ Relatively few people are prohibited from possession, such as felons or those under indictment, while most of us are entitled to possess guns.²² True, a handful of jurisdictions have gone further towards restricting ownership; for example, the District of Columbia bans possession of handguns for almost everyone living in the city.²³ However, at the federal

¹⁷ Interview 10 in Butner, North Carolina (April 1994).

¹⁸ Interview 9 in Butner, North Carolina (April 1994).

¹⁹ See The National Firearms Act, 26 U.S.C. § 5801 (1995) (imposing a tax of \$1,000 per year on importers and manufacturers for each place of business and \$500 per year on dealers for each place of business).

²⁰ See The Brady Handgun Violence Prevention Act, 18 U.S.C. § 922 (1994) (listing unlawful acts with regard to the possession, purchase and sale of firearms).

²¹ § 922(b)(4)-(5) (prohibiting the sale of destructive devices, machine guns, short-barrelled shotguns, and short-barrelled rifles).

²² § 922(g)(1)-(8).

²³ See D.C. CODE ANN. § 6-2312 (1995).

level and in most jurisdictions, the objective of gun regulation is to discriminate between different types of weapons and between different categories of people, i.e., to ban the most dangerous guns from commerce, and to ban possession by people whose past actions suggest they are especially dangerous.²⁴

One objective of federal gun control law is to insulate states so that stringent regulations on firearms commerce adopted in some states will not be undercut by greater availability of guns in other states. The Gun Control Act of 1968 established the framework for the current system of controls on gun transfers.²⁵ The Act limits all shipments of firearms, including mail order sales, to federally licensed dealers, who are required to obey applicable state and local ordinances.²⁶ Restrictions on sales of guns to out-of-state residents also exist.²⁷

A number of states have adopted restrictions on commerce in firearms, especially handguns. As of 1993, a majority of states require that handgun buyers submit to a waiting period and a criminal record check before taking possession of a handgun.²⁸ All but a few state transfer-control systems are permissive; most people are legally entitled to obtain a gun. In 1993, Congress adopted the Brady Bill, which requires that dealers in states that lack their own screening system for handgun purchasers enforce a five day waiting period between the purchase and transfer of a handgun.²⁹ The dealers must notify law enforcement officials shortly after receiving a purchase request so that they can run a background check on the buyer.³⁰

North Carolina law requires that an individual purchasing a pistol obtain a permit from his county sheriff.³¹ Although the permit proce-

²⁴ See Cook & Blose, *supra* note 2, at 80-91; 18 U.S.C. § 922(g) (1994).

²⁵ See 18 U.S.C. § 922.

²⁶ *Id.*

²⁷ The Gun Control Act of 1968, 18 U.S.C. §§ 921-930, prohibited licensed dealers from selling long guns to in-state residents. However, the 1968 statute allowed dealers to sell long guns to residents of contiguous states if both states' regulations permitted. The McClure-Volkmer Amendments of 1986 eased the restrictions on out-of-state long gun sales by allowing dealers to sell long guns to out-of-state purchasers from any state, neighboring or otherwise. 18 U.S.C. § 922(b)(3)(A) (1994). Such interstate transactions are now legal as long as each transaction complies with the regulations of both the buyer's state of residence and the state in which the sale occurs and the transferee meets with the dealer in person to accomplish the transaction. *Id.*

²⁸ BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS 1993, at 142 (Kathleen Maguire & Ann L. Pastore eds., 1994) (data compiled by the National Rifle Association of America, Institute for Legislative Action).

²⁹ 18 U.S.C. § 922(s)(1) (1994).

³⁰ § 922(s)(1)(A)(i)(III).

³¹ "It shall be unlawful for any person, firm, or corporation in this State to sell, give away, or transfer, or to purchase or receive, at any place within this State from any other

dures differ by county, all sheriffs have thirty days in which to review a pistol permit application.³² In accordance with federal law, a pistol permit cannot be issued to a felon, a fugitive from justice, a drug addict, or an individual who has been confined to a mental institution by court order.³³ However, in North Carolina an individual who has completed a felony sentence has all rights restored, including the right to own a firearm.³⁴

The permit system in North Carolina is permissive rather than restrictive. North Carolina does not limit the number of permits issued to an individual. In the three-county Triangle area, officials issued 21,964 permits in 1992 and 1993—one for every twenty-three adult residents.³⁵ But for many of these handgun buyers, one was not enough.

We analyzed the list of permits issued in Wake County, North Carolina where the sheriff granted as many as five permits per application. We found that the average application in 1992 was for 2.2 permits. Furthermore, 104 individuals applied more than once. Eighteen individuals picked up ten or more permits during 1992. The maximum number of permits issued to one individual was twenty-five.³⁶

place within or without the State any pistol or crossbow unless a license or permit therefor has first been obtained by the purchaser or receiver from the sheriff of the county in which that purchaser or receiver resides." N.C. GEN. STAT. § 14-402(a) (1994).

Any transfer of a handgun to an individual who has not obtained a permit is technically illegal. However, the sheriff departments in the Triangle area consider this statute to apply primarily to purchases of pistols from FFLs [federal firearm licensees] and believe that permits are not required, but can be requested of the buyer by the seller in secondary transactions. Interviews with Triangle Area Sheriff Offices, in N.C., June 1994.

³² The law states that the sheriff "shall have fully satisfied himself by affidavits, oral evidence, or otherwise, as to the good moral character of the applicant therefor, and that such person, firm, or corporation desires the possession of the weapon mentioned for (i) the protection of the home, business, person, family or property, (ii) target shooting, (iii) collecting, or (iv) hunting. . . Each applicant for any such license or permit shall be informed by said sheriff within 30 days of the date of such application whether such license or permit will be granted or denied. . . ." N.C. GEN. STAT. § 14-404 (1994).

³³ *Id.*

³⁴ "North Carolina automatically restores the rights of citizenship to convicted felons upon their release from prison, parole, or probation. N.C. GEN. STAT. § 13-1 (1994). Included in those restored rights is the right to own and possess firearms. The only exception is created by the Felony Firearms Act, N.C. GEN. STAT. § 14-415.1 (1994), which prohibits felons from possessing handguns away from their residence or place of business for a period of five years from release from prison, parole, or probation, whichever is later." See Letter from Johnny Binkley, Bureau of Alcohol, Tobacco and Firearms Agent in Winston-Salem, to Joel Rosch, Director of Research, N.C. State Bureau of Investigation (Dec. 1993).

³⁵ See Appendix C, available from the authors.

³⁶ It is not possible to know whether these permits actually were used to purchase guns. The seller of the gun keeps the pistol permit with his records. Permits are not returned to

The state and federal systems of regulation described above have important loopholes: dealers are not regulated effectively, and some of them do not play by the rules. Half of all transfers that do not involve dealers are for the most part unregulated even within the letter of the law. Any systematic effort to reduce the availability of guns to dangerous people must take into account all relevant gun markets.

IV. AN ANALYSIS OF PRIMARY AND SECONDARY MARKETS FOR GUNS

New guns are sold by dealers who have a federal firearms dealer's license. Once in the private domain, these guns change hands in a wide variety of transactions, many of which do not involve licensed dealers. The key distinction is not whether the transfers involve new or used guns, but whether sales are conducted by federal firearms licensees (FFLs) or by non-licensed individuals. We term the former as the *primary market* and the latter as the *secondary market*.³⁷

For a buyer, purchasing a gun from a dealer offers the same advantages as purchasing a motor vehicle from a dealer. The buyer can locate the dealer without difficulty. The dealer offers a wide variety as well as an implicit or explicit warranty of quality. On the other hand, a buyer purchasing a firearm from a dealer faces several disadvantages due to regulations of such transfers. First, the sale is traceable: the dealer is required to keep a record of the sale and provide that information to law enforcement agencies on request. Second, if the buyer is shopping for a handgun, then buying from a dealer means submitting to a criminal record check by local law enforcement, a process that in most states takes several days and requires a fee. Third, if the buyer is underage or otherwise not eligible to buy a gun, he will have to use false identification and lie. Of course, some FFLs are willing to ignore these regulations and sell a gun without requiring the usual paperwork.

The secondary market is diverse, similar to the secondary market for motor vehicles. People who seek to sell a gun privately have to advertise that fact to potential buyers. Most newspapers accept classified ads for guns. Guns may also be advertised through a wide variety of newsletters and magazines oriented to gun owners and gun sports enthusiasts.³⁸ Many transactions occur within families or among friends.³⁹ Word-of-mouth advertising is apparently an effective means

any central office and do not act as a registration system.

³⁷ This terminology is borrowed from the market for government securities; initially, securities issued by the U.S. Treasury Department are sold exclusively by primary dealers. Once purchased from a primary dealer, securities are resold in a secondary market.

³⁸ Examples of such publications include *Shotgun News* and *American Rifleman*.

³⁹ See WRIGHT & ROSSI, *supra* note 13, at 183; SHELEY & WRIGHT, *supra* note 13, at 6;

for finding a buyer on the street, and some people, often drug dealers, deal in guns frequently enough to become known in this regard.⁴⁰ The gun show, where FFLs mingle with non-dealers who have one or two guns to sell, is a unique institution for bringing buyers and sellers together.

Secondary transactions are typically accomplished expeditiously, without any recordkeeping or fees. Yet buyers in the secondary market may find it time consuming to locate the kind of gun they want, and they may not be sure whether the seller is the legitimate owner of the gun or whether the gun works properly.

The available data do not provide a complete answer as to the size of the two markets. BATF provides estimates based on tax records of the number of new handguns, shotguns, and rifles sold in each year in the U.S. This estimate is calculated as the number manufactured plus the number imported minus the number exported. During the 1980s sales averaged 4.5 million units annually, including 2.1 million handguns and 2.4 million long guns.⁴¹ Presumably, all of these new guns are sold retail by FFLs.

The volume of used gun sales and other transfers, most of which would be in the secondary market, is not known. An occasional survey, which provides some information, asks respondents how and where they obtained their most recent firearm. For example, an April 1992 *Los Angeles Times* poll of Southern California adult residents found that 59% of gun owners reported obtaining their most recent gun from a store, while 18% purchased their gun from a friend or relative, 10% received it as a gift or inheritance, and 12% named another source or provided no information.⁴² A ballpark estimate is that half of the most recent acquisitions by these California gun owners were of guns already in private hands. Survey data for other years and broader samples are compatible both with this estimated fifty-fifty split between new and used guns, and with the sixty-forty split between the primary and secondary markets.⁴³

Charles M. Callahan & Frederick P. Rivara, *Urban High School Youth and Handguns: A School-Based Survey*, 267 JAMA 3038, 3038-42 (1992).

⁴⁰ Sheley and Wright report that 36% of the youthful inmates they interviewed had obtained their most recent handgun from a drug dealer. SHELEY & WRIGHT, *supra* note 13, at 6. For examples, see Don Terry, *How Criminals Get Guns: In Short, All Too Easily*, N.Y. TIMES, March 11, 1992, at A1.

⁴¹ See Philip J. Cook, *Notes on the Availability and Prevalence of Firearms*, 9 AM. J. PREVENTIVE MED. 33, 33-34 (1993).

⁴² David Freed, *Fear of Violence From Guns Alters Many Lives*, L.A. TIMES, May 17, 1992 at A1.

⁴³ See Philip J. Cook, *The Role of Firearms in Violent Crime*, in CRIMINAL VIOLENCE 236 (Marvin Wolfgang & Neil Weiner eds., 1982); compare GARY KLECK, POINT BLANK: GUNS AND VIOLENCE IN AMERICA 45 (1991). Kleck reports that in the results of a 1978 poll of a na-

Based on an estimate of the fraction of guns in private hands that were acquired used, we can extrapolate, under certain assumptions, an estimate of the number of used guns that change hands each year.⁴⁴ Given the fifty-fifty split in acquisitions, our best estimate is that there are roughly as many transactions of used guns as there are sales of new guns.⁴⁵

Youths and criminals tend to obtain their guns *outside* the regulated sector of licensed dealers. When asked in a recent survey how and where they got their last handgun, 43% of adult prisoners reported purchasing the gun.⁴⁶ Of those who purchased their handguns, only one-third purchased them in the primary market, a gun store or pawnshop.⁴⁷ About 15% of their most recent handguns were acquired in primary transactions. The pattern of acquisition of long guns, shotguns and rifles, was similar.

Youths are less likely than adult felons to obtain guns in the primary market since federal law prohibits FFLs from selling handguns to those under twenty-one and prohibits the sale of long guns to those under eighteen. In a survey of delinquents and inner-city youths, only 7% of inmates and 11% of students who owned handguns had purchased the guns from a gun or pawn shop.⁴⁸

A. LEGAL AND ILLEGAL TRANSACTIONS

The legality of any transaction depends on the status of the buyer, entitled or proscribed,⁴⁹ the seller, licensed or unlicensed,⁵⁰ the weapon itself, legal or illegal model, licit or stolen,⁵¹ and the de-

tional sample conducted by DMI, 36% of guns acquired by respondents were from private sources. *Id.* The corresponding number for Southern California from the 1992 Los Angeles Times poll is also 36%, leaving aside those who say they do not know or refuse to answer. Freed, *supra* note 42, at A1.

⁴⁴ Suppose that half of the most recent guns obtained by gun owners were acquired used. That does not imply that half of all acquisitions are of used guns. It could be, for example, that people who tend to acquire used guns are much more active in the gun market than those who prefer to acquire new guns. Then, on an annual basis, transactions in used guns would be more than half the total. But there is no way of knowing whether those who tend to acquire used guns are more or less active than those who acquire new guns, and hence we proceed on the assumption that they are equally active.

⁴⁵ See Cook, *supra* note 12, at 12.

⁴⁶ See WRIGHT & ROSSI, *supra* note 13, at 183. The rest reported stealing (32%), borrowing (9%), trading (7%), or receiving the gun as a gift (8%). *Id.*

⁴⁷ WRIGHT & ROSSI, *supra* note 13, at 185.

⁴⁸ See SHELEY & WRIGHT, *supra* note 13, at 6.

⁴⁹ 18 U.S.C. § 922(g) (1994) (listing those who are prohibited from purchasing firearms).

⁵⁰ § 923 (detailing the licensing standards and rules for sellers, importers and manufacturers).

⁵¹ § 922(c)(4)-(5) (prohibiting the sales of certain types of weapons and ammunition); § 922(i) (prohibiting the transport or shipment of any stolen weapon or ammunition);

tails of the transaction, paperwork completed or "under the counter."⁵² Table 1 presents examples of various transactions, classified according to whether they create legal liability for the seller. Of course, any of the scenarios would be illegal if the gun were stolen or illegally modified and banned from commerce.⁵³

B. LINKS BETWEEN MARKETS

This type of descriptive information is a useful start, but does not tell us how markets will respond to a change in regulation. The primary and secondary markets are closely linked, like the analogous markets for motor vehicles or prescription drugs.

Markets are linked because many buyers move from one to the other, depending on relative prices and other terms of the transaction. Other things being equal, most buyers prefer to buy from a dealer so they have a broad array of choices and a warranty concerning the legal status and condition of the gun. To compete, secondary sellers have to offer lower prices,⁵⁴ both because guns sold in the secondary market are used and of uncertain quality, and because shopping in the secondary market is inconvenient. While price differences between the two markets is not uniform for all types of guns, there is a close correspondence in the price structures of the primary and secondary markets; guns that are relatively expensive in gun stores are also relatively expensive on the street.⁵⁵ Further, when there is a general upward shift in the price of new guns and the demand for used guns increases, prices in the secondary market increase as well. In these respects, the market for used guns is similar to the markets for houses or used cars.

While buyers prefer the primary market, the secondary market will look increasingly attractive as the regulations governing the primary market become more restrictive. If buying from dealers requires long waiting periods, costly permits, or other inconveniences, the de-

§ 922(j) (prohibiting the possession, concealment, storage, sale or disposal of any stolen weapon or ammunition).

⁵² 18 U.S.C. § 923(g) (stipulating the procedures for the sale of firearms).

⁵³ § 921-930.

⁵⁴ New guns are typically sold for a small markup, 5-15%, over wholesale. Gun stores sell guns at approximately 15% over cost. Telephone Interview with Bill Bridgewater, Executive Director, National Alliance of Stocking Gun Dealers Association (Jan. 1994). Some of the larger chain retail stores are able to sell on a 3 to 5% margin. See Stuart Steers, *Making a Killing: The Weapons Business in Colorado*, 44 DENV. BUS. J., July 23, 1993, at 1A. Federally licensed dealers who sell at gun shows can sell guns for less than gun store dealers because their overhead is lower. Telephone Interviews with Ernie Driver, Special Agent, Bureau of Alcohol, Tobacco and Firearms (March 1994). At shows, guns will sell for around 10% over cost. Interview with Bill Bridgewater, *supra*.

⁵⁵ See *infra* note 57.

mand for guns in the secondary market will be stronger.

In cities such as New York and Boston, where the prevalence of gun ownership is low because legal transactions are subject to onerous regulations or are banned, prices in the secondary market are higher than in other east coast locales.⁵⁶ The street prices of guns are actually higher than prices in gun stores. As a result, dealers have long been able to make a profit by buying guns in Virginia or points south and running them northward to the street markets of northeastern cities.⁵⁷ The high price of guns in the secondary market in New York and Boston is the direct result of the regulation of the primary market.⁵⁸

A more complete analysis must consider the role of the scofflaw dealer. These are dealers who are willing to sell guns to youths and felons or to sell guns without requiring the usual paperwork; they find a ready market.⁵⁹ From the perspective of the buyers, scofflaw FFLs combine the advantages of both the primary and secondary markets: they have the ability to choose any new gun in the catalog, but without the paperwork, delays, fees, and restrictions on who can buy. Prices in such transactions are generally much higher than in licit primary sales.⁶⁰

One conclusion from this analysis is that the regulatory structure

⁵⁶ For example, a Davis 380 that will bring \$250 on the streets of Charlotte or Raleigh, will bring \$400 on the streets of New York or Washington, D.C. Memorandum from Bill Bridgewater, Executive Director, National Alliance of Stocking Gun Dealers Association (May 15, 1993). Similar differentials exist across the country. A .357-caliber magnum that sells for \$250 in a Dallas gun shop will bring \$700 on the streets of New York. See Richard Lacayo, *Running Guns up the Interstate*, TIME, Feb. 6, 1989, at 24. Ravens that went for \$50 in Ohio sold on the streets of Philadelphia for \$250. Tec-9s, \$200 a piece in Ohio, were sold on the streets of Philadelphia for \$500. See Michael Iskoff, *Gun Dealer's Great Scam: US Licenses Grow Popular with Criminals*, WASH. POST, May 8, 1991, at A1. "On the streets of New York, an illegal handgun often can be sold for more than \$1000 in cash or drugs—a markup of five times or more over the price in Virginia," said Patrick Hynes, a BATF special agent. John F. Harris, *Gunrunning Alleged in Indictment: Trail Said to Run From Va. to NY.*, WASH. POST, Jan. 6, 1993, at D1. Joel Rosch, North Carolina SBI, provided us with the following information on street prices in New York City:

	Retail	NYC Street
Jennings .22	\$ 55	\$ 250
Raven .25	60	275
Davis .380	90	525
MAC 11	290	1,000
Tec 9	300	1,000

⁵⁷ See Lacayo, *supra* note 56, at 24; Harris *supra* note 56, at D5; John Ellement, *Many Boston Guns Traced to State Sources*, BOSTON GLOBE, March 23, 1993, at 17.

⁵⁸ See Cook, *supra* note 41, at 35-6.

⁵⁹ See generally, VIOLENCE POLICY CENTER, MORE GUN DEALERS THAN GAS STATIONS (1992). For examples, see Michael Iskoff, *supra* note 56; Francis Hopkins, *Gun Ring's Goods Often at the Scenes of the Crimes*, RALEIGH NEWS AND OBSERVER, July 19, 1993.

⁶⁰ See David Freed, *Sales Put L.A. Under the Gun*, L.A. TIMES, May 18, 1992, at A1, A12.

has large loopholes. But despite these loopholes, the regulations do make a difference. Tougher restrictions in the primary market raise prices in the secondary market. While such restrictions do not entirely prevent youths and criminals from obtaining guns, higher prices will deter some sales. Just as it is not necessary to plug every hole in the dam to hold water, so it is not necessary to directly regulate each transaction to reduce the availability of guns to dangerous people.

In what follows, we consider the prospects for regulating the primary sector more closely, and for restricting the secondary markets more effectively. Improving FFL regulation, cracking down on gun theft, and extending regulation to secondary markets would impede the flow of guns to unauthorized persons.

V. STRENGTHENING FFL REGULATION

Strengthening the regulation of firearms dealers would curtail the flow of weapons into the hands of prohibited classes of individuals.

A. BACKGROUND

A federal firearms license (FFL) allows an individual to buy guns mail-order at wholesale prices without a background check or a waiting period.⁶¹ To obtain a three year FFL, an applicant must be at least twenty-one years of age and provide a Social Security number, proposed business name, location, and hours of operation.⁶² An applicant must state that he is not a felon, a fugitive, an illegal immigrant, or a substance abuser, and that he has never been committed to a mental institution or dishonorably discharged from the military. The fee for the most common FFL, Type 1, is \$200 for the first three years and \$90 for three-year renewals;⁶³ before December 1993, the Type 1 license was only \$10 per year.⁶⁴ For an additional Special Occupancy Tax of \$500 per year, the dealer may obtain a Class III license, which authorizes the dealer to sell fully automatic weapons, silencers, sawed-off rifles, shotguns, and other specialty weapons.⁶⁵ According to a report by the Violence Policy Center, "[i]t is far easier to become a dealer in machine guns than to obtain a license to own a fully auto-

⁶¹ *Id.*

⁶² *See id.* at A1, A13; 18 U.S.C. § 923(d)(1)-(2) (1994). An applicant must also provide the Secretary with a photo and fingerprints, 18 U.S.C. § 923(a), and must not be ineligible to purchase firearms as detailed in § 922(g), (n).

⁶³ § 923(a)(3)(B).

⁶⁴ *Id.*

⁶⁵ *See* 60 Fed. Reg. 10782 (1995) (to be codified at 27 C.F.R. § 178).

matic weapon as an individual."⁶⁶

BATF runs the applicant's name and Social Security number through the FBI's criminal records to screen out convicted felons.⁶⁷ However, usually the system cannot determine whether a name and Social Security number on an application are false.⁶⁸ Personal information on applicants, such as mental health and substance abuse records, is generally not available.⁶⁹

In 1993, there were nearly 284,000 federally licensed firearms dealers in the United States.⁷⁰ Few of these licensees met the legal requirement that they actually engage in the business of dealing firearms. Most licensed dealers are people who find it convenient to buy their own guns direct from a wholesaler.⁷¹ Gun magazines carry ads encouraging people to get their own license, offering "kits" to aid in the application process.⁷²

1. Federal Regulation of Dealers

Until very recently, BATF has not had the resources nor the authority to effectively screen license applicants and regulate FFLs. The number of FFLs increased 59% from 1980 to 1993 while the number of BATF inspectors declined 13% during the same period.⁷³ As a result, only 10% of applicants were interviewed by a BATF inspector before a license was issued; fewer than one in every 1,000 applications were denied licenses.⁷⁴

The McClure-Volkmer amendments of 1986 weakened BATF's ability to regulate gun dealers. Under McClure-Volkmer, BATF can

⁶⁶ See VIOLENCE POLICY CENTER, *supra* note 59, at 37.

⁶⁷ Federal law prohibits several categories of persons from obtaining firearms, including convicted felons. 18 U.S.C. 922(g)(1)-(8). The Bureau of Alcohol, Tobacco and Firearms' (BATF) investigation of applicants for licenses to sell firearms includes checking federal and state governments' criminal records systems. Telephone interview with Les Stanford, BATF, (July 11, 1995).

⁶⁸ Pierre Thomas, *Hit-or-Miss Control of Firearms Sales; Enforcers Can't Keep Up With Dealers*, WASH. POST, Nov. 29, 1992, at A1, A10.

⁶⁹ See JAMES TIEN & THOMAS RICH, U.S. DEPT. OF JUSTICE, IDENTIFYING PERSONS, OTHER THAN FELONS, INELIGIBLE TO PURCHASE FIREARMS: A FEASIBILITY STUDY (1990).

⁷⁰ Of the 612 local dealers in the Triangle area, 577 (94%) hold a Type 1 basic retail license, and 32 (5%) hold a Type 2 pawnshop license. There is one federally licensed firearms dealer for every 814 adults in the area, fewer than the national average.

⁷¹ See Freed, *supra* note 60, at A1, A12.

⁷² These kits contain information on how to fill out BATF's FFL application and explain the laws relevant to firearms dealers. Some of these ads offer a "guarantee" that one's application will be accepted. See, e.g., ads by Mohawk of Boulder City, Nevada in *Shotgun News* (stating that a "license [is] guaranteed or [a] full refund").

⁷³ See Stuart Dabbs, How North Carolina Can Better Regulate Gun Dealers 10 (1994) (unpublished M. thesis, Duke University); Jim Specht, *Gun Control Bill Aimed at Weapons Sellers*, GANNETT NEWS SERVICE, March 3, 1993, available in LEXIS, News Library, GNS File.

⁷⁴ See VIOLENCE POLICY CENTER *supra* note 59, at 17.

make only one inspection of a dealer per year without a warrant.⁷⁵ Further, due process protection was instituted that makes it difficult to deny or revoke a license.

In actuality, BATF's problem is more one of limited resources than limited authority. In 1990, only 2% of dealers, excluding machine gun dealers, were inspected (all machine gun dealers are inspected every year).⁷⁶ Inspection tends to be concentrated on owners of gun stores rather than on individuals who deal guns from their homes.⁷⁷ As a result, the relatively few dealers that BATF does inspect in any one year are likely to be inspected in subsequent years as well. Only 10% of Type 1 dealers have ever had a compliance inspection.⁷⁸ When inspections do occur, violation of BATF regulations are common,⁷⁹ yet FFLs are rarely revoked.⁸⁰

2. *In the Business*

One of the most widespread violations of federal law is the requirement that FFLs be in the business of selling firearms. "Engaged in the business" is defined as:

a person who devotes time, attention and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms, but such term shall not include a person who makes occasional sales, exchanges or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his personal collection of firearms.⁸¹

Evidence from our study and others indicates that the majority of FFLs are not really "in the business." We found that 40% of Triangle area dealers, that is the dealers in the Raleigh-Durham-Chapel Hill area, had not provided BATF with the name of their business, while another 38% provided business names and phone numbers that turned out to be home numbers. Among the few Type 1 dealers in the Triangle area who have businesses that can be found in the phone

⁷⁵ 18 U.S.C. 923(g)(1)(B) (1994).

⁷⁶ VIOLENCE POLICY CENTER, *supra* note 59, at 44.

⁷⁷ See VIOLENCE POLICY CENTER, *supra* note 59, at 47-48; "Remarks of Treasury Secretary Lloyd Bentsen at the Federal Law Enforcement Training Center Awards Ceremony," DEPARTMENT OF TREASURY NEWS, Jan. 4, 1994.

⁷⁸ FIREARMS AND EXPLOSIVES DIVISION, BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS, OPERATION SNAPSHOT FINAL REPORT 8 (1993). Only 13% of Type 1 dealers and 50% of Type 2 dealers in the Triangle area have ever been inspected.

⁷⁹ Ninety percent of the gun dealers inspected by BATF in 1990 were cited for violations such as incomplete records of gun buyers and reductions in gun inventories unaccounted for in sales. See VIOLENCE POLICY CENTER, *supra* note 59, at 48.

⁸⁰ In 1990, there were 235,684 Type 1 FFLs; that year BATF revoked just three licenses. See VIOLENCE POLICY CENTER, *supra* note 59, at 56.

⁸¹ 18 U.S.C. § 921(a)(21)(C) (1994).

book (20%), many listed businesses have little to do with retail gun sales: among those listed were chiropractors, financial planners, and beauty supply shops. Just 4% of the dealers listed their businesses in the yellow pages under "Guns." These findings are consistent with the rest of the nation: 80% of dealers nationwide do not have storefront retail business selling firearms.⁸²

3. State and Local Regulation of Dealers

Federal law requires that licensed dealers comply with state and local laws governing firearms commerce. Almost half the states do not regulate dealers. North Carolina is typical of those states that do regulate; it requires all firearms dealers to obtain a state license to deal firearms, and to collect sales tax on the firearms they sell.⁸³ In North Carolina the state firearm dealer license is a tax; it is managed by the Department of Revenue, and it is not used to screen or regulate individuals who deal firearms in the state. In addition to the state license, some cities and counties in North Carolina levy their own licensing tax.⁸⁴ Few dealers bother to obtain these local licenses.

Our comparison of BATF records and North Carolina Department of Revenue records found that as of 1993 only 26% of Type 1 dealers in the Triangle area had acquired the \$50 state license; 69% of Type 2 dealers, pawn brokers, had paid for the license. Of the 370 FFLs in the Triangle cities of Raleigh-Durham-Chapel Hill, only forty-five had the required city licenses to deal firearms.⁸⁵

It is worth noting that the Type 1 dealers who paid for the state license were not necessarily those who listed their businesses in the phone book. In fact, several major retail stores had not paid for the state license, including Walmart (six stores in the Triangle area had FFLs), K-mart (nine stores with FFLs), and Rose's (eight stores with FFLs). Some individuals who had not listed a business name with BATF had, in fact, obtained a state license.⁸⁶

As of spring 1994, the Department of Revenue obtained a list of FFLs from BATF, and is matching this list manually with a list of state

⁸² See VIOLENCE POLICY CENTER, *supra* note 59, at 47.

⁸³ The law requires that "[e]very person, firm, or corporation who is engaged in the business of selling or offering for sale firearms . . . shall obtain a license from the Secretary of Revenue . . ." N.C. GEN. STAT. § 105-80(a) (1992).

⁸⁴ See Todd Richissin & John Schmid, *Gun Dealers Skip State, Local Licenses*, RALEIGH NEWS AND OBSERVER, Feb. 4, 1994, at A1.

⁸⁵ *Id.*

⁸⁶ In addition, there were names on the county lists provided by the Department of Revenue that were *not* found on the county lists from BATF. In part this discrepancy could result from differences in how BATF and the Department of Revenue assigned dealers to counties.

license holders.⁸⁷ FFLs who do not have the state license are sent a letter saying they must obtain a license or establish that they are not actually dealing firearms, in which case they must forfeit their FFL.⁸⁸ In two years, the state expects to have a computer system capable of automatically comparing the lists.

The experience of other states is illuminating. Like North Carolina, Alabama issues state gun dealer licenses through the Department of Revenue. There are no provisions for background checks, inspections, or other enforcement.⁸⁹ In 1993, the Alabama Department of Revenue obtained a list of Alabama FFLs from BATF and contacted FFLs who lacked a state license. Nine hundred FFLs claimed to have been ignorant of the state requirement and paid the license fees and penalties for up to the past three years. Over \$250,000 was collected.⁹⁰ Another 900 FFLs stated that they were not in fact firearms dealers for state tax purposes. They were asked to sign an affidavit that was sent to BATF. Their licenses will be canceled. About 200 people could not be found; their licenses will also be canceled.

New Jersey regulates gun dealers more strictly than any other state. Handgun dealers must submit to fingerprinting, a state and federal criminal history check, and a review of any mental health records. In addition, licensees are inspected once a year by the state.⁹¹ Presumably, as a result of this stringent process, New Jersey has the fewest FFLs per capita.⁹² About half of all its FFLs have a state handgun dealers license.

Maryland also has thorough licensing procedures for handgun dealers. Applicants for state licenses must submit fingerprints and a photograph. Criminal records, motor vehicle records, and some mental health records are checked.⁹³ Zoning requirements must be met. Unlike New Jersey, Maryland makes no effort to determine which of the state's FFLs should have a handgun dealers license. The result is that Maryland has more gun dealers than states with similar laws.

New York City has one of the most stringent dealer licensing laws in the country. Applicants pay a fee, submit fingerprints, undergo a criminal background check, and must provide an extremely detailed description of their intended business. Dealing without a storefront is

⁸⁷ See Dabbs, *supra* note 73, at 16.

⁸⁸ See 60 Fed. Reg. 10782 (1995).

⁸⁹ See ALA. CODE § 40-12-2 (1994).

⁹⁰ See Dabbs, *supra* note 73, at 23.

⁹¹ See N.J. REV. STAT. § 2C:58-2 (1994).

⁹² See Dabbs, *supra* note 73, at 20.

⁹³ See MD. CODE ANN. § 27-443 (1994).

forbidden. Applicants must also meet requirements for store security, including motion detectors.⁹⁴

The New York Police Department has received a grant from the U.S. Department of Justice to implement these rules.⁹⁵ When BATF receives an application for a license, a BATF inspector and NYPD officer work together. If the applicant is ineligible for a state license—and almost all of them are—he is discouraged from applying for the federal license. The NYPD has not issued a single state license in over four years.⁹⁶

B. PROSPECTS FOR MAKING A DIFFERENCE THROUGH IMPROVED REGULATION

Improved FFL regulation shows promise for stemming the flow of guns to proscribed individuals. While there is no systematic data available on the effect of scofflaw dealers, there is anecdotal information suggesting the variety of ways in which they have abused the system. Some federally licensed firearm dealers become known for their willingness to sell firearms with no questions asked.⁹⁷ Others purposely seek out the proscribed sector of the gun market by selling in crime-ridden areas of cities⁹⁸ or by selling directly to gangs or drug dealers.

In the Triangle area, a Raleigh dealer became notorious as the source of a number of guns that later turned up in violent crimes.⁹⁹ He and his ring of associates are estimated to have put 1,200 guns on the streets in a single year.¹⁰⁰ He used his license to buy and sell guns off the books in exchange for crack or money, and he primarily served customers who could not legally purchase guns because they were convicted felons or juveniles.¹⁰¹

Jack Haynes, a FFL dealer in Erwin, Tennessee distributed over

⁹⁴ See Dabbs, *supra* note 73, at 22.

⁹⁵ See *Justice Department Funds Joint BATF-NYPD Program to Improve Gun Dealers' Compliance with Firearms Regulations*, June 2, 1993, available in LEXIS, Exec Library, USNWR File (US NEWSWIRE).

⁹⁶ See Dabbs, *supra* note 73, at 22.

⁹⁷ See VIOLENCE POLICY CENTER, *supra* note 59, at 70.

⁹⁸ As one newspaper reported:

[I]ncreasingly, officials say, federal gun licenses have become a hot commodity on the streets, abused by illicit gun runners, drug dealers and others looking for fast and easy access to heavy firepower. In some of the city's drug-infested neighborhoods, "you have five, six or eight licensed (gun) dealers on the same street," said Bernard La Forest, special agent in charge of the Detroit BATF office.

See Iskoff, *supra* note 56, at A1.

⁹⁹ See Francis Hopkins & Steve Riley, *Agents Smash Gun Ring*, RALEIGH NEWS AND OBSERVER, July 10, 1993, at A1.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

15,000 guns a year on the east coast.¹⁰² He ordered large numbers of handguns, altered their serial numbers, and distributed them through contacts in North Carolina.¹⁰³ Many of Haynes' guns sold for double the retail price. According to the BATF agent in charge of the investigation, "drug gangs and other violent criminals prefer untraceable guns and are willing to pay a premium, especially for bulk quantities."¹⁰⁴ Similar abuses of FFLs have been reported across the nation.¹⁰⁵

A variation of selling directly to proscribed individuals is the "straw purchase" transaction. In a straw purchase, a qualified individual purchases a gun for a proscribed individual. Someone who knowingly makes a straw purchase for a proscribed person commits a federal crime. It is the dealer's legal responsibility to take precautions against selling to a straw purchaser, but the dealer is not usually in a position to know that the transaction is illegitimate.

If effective regulation could make it more difficult for youths and criminals to buy guns from dealers, two notable consequences would result. First, one of the leaks in the regulatory system which helps to supply proscribed individuals would be plugged. Second, the total number of guns in circulation would decrease. In the secondary market, demand would increase as a first consequence and supply would fall as a second consequence. Basic economics predicts that prices would then rise, thus encouraging youths and others to economize on gun possession.

C. RECENT CHANGES AT BATF

In the past two years increasing public attention has focused on lax federal regulation of gun dealers. In August 1993, the Clinton administration instructed BATF to take its regulatory responsibilities more seriously, in particular to:

- 1) improve "the thoroughness and effectiveness of background checks in screening dealer license applicants";
- 2) make the "'premises' requirement of the statute more meaningful by increasing field checks" and using "other procedures to verify compliance";
- 3) review sanctioning policies to determine the desirability of "adding the option of license suspension for certain violations";
- 4) expand the use of "cooperative agreements with State [sic] and local

¹⁰² U.S. BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS, *Untitled Press Release Covering the Jack Haynes Case*, March 2, 1993 (on file at BATF).

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ See Iskoff, *supra* note 56, at A1.

law enforcement agencies."¹⁰⁶

BATF has begun to implement these changes. The new FFL application requires a full ten-fingerprint card and a photograph. BATF in North Carolina is advising applicants that they must first obtain state and local licenses. In addition, BATF is attempting to increase the number of application inspections; however, it does not have any additional money or staffing for this purpose.¹⁰⁷ BATF is also conducting "preliminary" application inspections; these are telephone interviews verifying information about the applicant's business and compliance with state and local laws.¹⁰⁸ In conjunction with the license fee increase of the Brady Law, these new procedures are already starting to have an effect on the number of FFL applications. In the first five months of 1994, the number of FFLs in North Carolina declined by 10%, probably the result of increasing fees at the federal level and increasing enforcement of state regulations.¹⁰⁹

As the number of FFLs falls, the current capacity of BATF and the states to regulate dealer activities will become more equal to the task. North Carolina could supplement the meager regulatory efforts of BATF by transferring responsibility for state licensing from the Department of Revenue to an agency that has the capacity to review applications and conduct regulatory investigations of licensees. Two reasonable options are the State Bureau of Investigation and Alcohol Law Enforcement.¹¹⁰

VI. CRACK DOWN ON THEFT

Theft is an important source of guns for youths and criminals.¹¹¹ To curtail this source would require owners to store their guns more carefully, and law enforcement agencies to give higher priority to in-

¹⁰⁶ Memorandum from President Clinton on Gun Dealer Licensing to the Secretary of the Treasury, 29 WEEKLY COMP. PRES. DOC. 1605-07 (Aug. 11, 1993).

¹⁰⁷ See Dabbs, *supra* note 73, at 14.

¹⁰⁸ U.S. Bureau of Alcohol, Tobacco, and Firearms, *Firearms Fact Sheet*, Jan. 4, 1994.

¹⁰⁹ See Chris O'Brien, *N.C. Gun Dealers Decimated*, RALEIGH NEWS AND OBSERVER, June 10, 1994, at A1.

¹¹⁰ See Dabbs, *supra* note 73, at 40.

¹¹¹ When asked where they obtained their most recent handgun, 32% of prisoners reported stealing that gun; 23% stole their most recent long gun. A number of other respondents believed that their most recent gun was stolen property even though they themselves did not do the stealing. See WRIGHT & ROSSI, *supra* note 13, at 17, 182-84. In the survey of youths conducted by Sheley and Wright, more than half of the youth inmates had stolen a gun at least once in their lives and 8% of inner-city students had stolen a gun. See SHELEY & WRIGHT, *supra* note 13, at 6. Of the young inmates who described themselves as gun dealers, the majority reported their most common sources as theft from homes or cars and acquisitions from drug addicts. *Id.* at 7-8. Nearly one in ten had stolen guns in quantity from stores or off trucks during shipment. *Id.*

vestigating and prosecuting cases in which a gun was stolen. Undercover work, which disrupts the stolen-gun market, may also be effective.

A. GUN OWNERSHIP AND GUN THEFT

The higher the rate of gun ownership among the general public, the more opportunity there is for proscribed individuals to acquire a gun through secondary transactions, including theft. Nationally, 49% of households have a firearm present,¹¹² a proportion that has remained constant for at least the last three decades. However, the percentage of households that own a *handgun* has increased substantially.¹¹³ The prevalence of gun ownership differs widely from city to city and from region to region. The fraction of burglaries in which a gun is stolen is highly correlated with the prevalence of guns.¹¹⁴

The average number of guns owned by gun-owning households is about four and one-half,¹¹⁵ so when a gun-owning household is successfully burglarized, several guns are likely to be included in the loot.

B. NUMBER OF GUNS STOLEN

The 150-200 million firearms in private hands, one-third of which are handguns, provide an enormous pool of potential weapons for the illicit market. While no precise estimates are available, it is safe to say that more than a half million guns are stolen each year. The FBI compiles national data only on the value,¹¹⁶ not the number, of stolen guns in its Uniform Crime Reporting (UCR) system. From the total value, it is possible to determine an estimate of the number of guns. The Police Foundation estimated that in 1991, between 300,000 to 600,000 guns were stolen, depending on what was assumed about the average value of a stolen gun. Data collected directly from law enforcement agencies in the Triangle area suggest an average gun value

¹¹² Rural people are far more likely than urban residents to own guns, including handguns. By region, gun ownership is highest in the Rocky Mountains, followed by the Southern states, the Midwest, then the Pacific states. The lowest prevalence rates are found in the mid-Atlantic states and New England. See Philip Cook, *The Effect of Gun Availability on Robbery and Robbery Murder: A Cross-Section Study of Fifty Cities*, 3 POL'Y STUD. REV. ANN. 743, 748, 752, 760-61 (1979). See also KLECK, *supra* note 43, at 39-40.

¹¹³ From 13% in 1959 to 32% in 1993. See Philip Cook & Mark Moore, *Gun Control*, in CRIME AND PUBLIC POLICY 269 (James Wilson & Joan Petersilia eds., 1995).

¹¹⁴ See Mark Moore, *Keeping Handguns from Criminal Offenders*, 455 ANNALS AM. ACAD. POL. & SOC. SCI. 92, 99-100 (1981).

¹¹⁵ See KLECK, *supra* note 43, at 54.

¹¹⁶ The value is based on the value reported to the police department by the owner.

of \$282.¹¹⁷ Applying this to the UCR total value of guns stolen throughout the nation in 1992 yields 458,475 gun thefts. Some of these were eventually recovered, but since they may have been used in crime prior to recovery, we do not exclude them from the count.

The total number of gun thefts in the U.S. can be calculated using results from the government's National Criminal Victimization Survey (NCVS) of households. Based on the NCVS, the average annual number of incidents in which at least one firearm was stolen for the period 1987 to 1992 was 340,700.¹¹⁸ The NCVS does not record the *number* of firearms stolen in each incident. Our calculations for the Triangle area place this average at 1.5.¹¹⁹ If the Triangle area is representative in this respect, it implies a national total of 511,000 guns stolen in noncommercial thefts. Again, using the results from the Triangle area, we increased that number by 11% to take account of gun thefts from commercial locations. Our best estimate for the national total, then, is 567,000.

While the two estimates are based on independent sources of information, they both imply close to a half million gun thefts.¹²⁰ That appears to be a reliable "ballpark" estimate and suggests the importance of this type of transaction. Since there are 4.5 million new guns sold each year, and a similar number of transactions involving used guns, we estimate that thefts are 5% or more of all transactions.

C. GUN THEFT IN THE TRIANGLE AREA

In order to better understand the importance of gun theft, we surveyed the eleven law enforcement agencies that collectively handle 90% of reported crime in the Triangle area.¹²¹ The results for jurisdictions that were able to give us relevant details are reported in Table 2. We concluded that at least 1,815 guns were stolen in the Triangle area in 1992—945 handguns and 870 long guns, valued, according to police records, at just over \$500,000. Of these, 28% of handguns were recovered, and 15% of long guns were recovered.

¹¹⁷ See *infra* part VI.C.

¹¹⁸ Michael Rand, *Guns and Crime: Handgun Victimization, Firearm Self-Defense and Firearm Theft*, UNITED STATES DEPARTMENT OF JUSTICE, BUREAU OF JUSTICE STATISTICS (April 1994).

¹¹⁹ See Table 2. There were 1,035 instances in which a gun was stolen in a Triangle area burglary in 1992, and the total number of guns stolen in these instances was 1,585. *Id.*

¹²⁰ Another source of data on gun thefts is the National Criminal Information Center database on stolen guns. But it only includes reports of theft received from local law enforcement agencies, which typically only report thefts involving guns for which they have complete information concerning make, model, and serial number.

¹²¹ See PHILIP J. COOK ET AL., *TOWARD MORE EFFECTIVE REGULATION OF GUN MARKETS* (1994); Appendix A for details of data collection effort and data collection instrument, available from the authors.

Given that rates of gun ownership in the area are similar to the national level, we were surprised that a gun was stolen in only 6.8% of residential break-ins.¹²² We found the explanation after a detailed analysis of Durham data. The list of break-ins for the year included a number of cases in which the thief was unsuccessful at making entry and others where the burglar's purpose did not appear to be theft. The percentage of residential break-ins in which a gun was stolen doubled when we restricted the denominator to successful break-ins where theft was the objective.

An average of 1.9 guns were stolen in each residential burglary in which a gun was reported stolen.¹²³ Guns were also stolen in a variety of other incidents, including thefts from motor vehicles. Thefts from commercial places accounted for about 10% of the total.¹²⁴

D. THEFT WITHIN THE ILLEGAL SECTOR

Police data understate the true number of guns lost to theft because not all gun thefts are reported to law enforcement agencies. One reason for non-report is that the victim himself is on the wrong side of the law. Our interviews with youth offenders suggest that they had guns stolen from them with some regularity:

"I had three or four [pistols] stolen from me. Like I'd put 'em down at a friend's house, there were lots of people around and someone took 'em."¹²⁵

"Yeah, a lot of guns have been stolen from me. They'd be taken from

¹²² In line with national figures, 24% of households in the Triangle area cities of Chapel Hill, Durham, and Raleigh possess handguns. See Craig Whitlock & Jane Stancill, *Triangle Backs Tougher Gun Laws*, RALEIGH NEWS AND OBSERVER, Oct. 26, 1993, at A1. A recent poll of Triangle area residents found that 36% of residents had a gun of some sort in their home. *Triangle Residents and Their Guns*, RALEIGH NEWS AND OBSERVER, July 23, 1995, at B5.

¹²³ See Table 2. Note that the results on residential burglary are given in the first row. A total of 981 guns were reported stolen in 481 incidents.

¹²⁴ Data gathered by BATF on thefts from manufacturers and shippers are sufficient to indicate that thefts from these sources are a relatively insignificant part of the problem. See Moore, *supra* note 114.

The rarity of theft from retail sites was noted in the recent robbery of a pawn shop in the Triangle area: seven automatic pistols (valued at \$100 to \$250) were stolen from a pawn shop in Durham. "Officer Michaels of Durham police said thefts such as the one at the pawn shop are rare. But when thieves do find their way into pawn shops, they grab guns and jewelry first." James Shiffer, *Durham Gift Shop Raided for Hot Goods*, RALEIGH NEWS AND OBSERVER, April 12, 1994, at B1.

NCIC data indicate that about a quarter of reported gun thefts were from commercial sources. See Matthew Yeager et al., *How Well Does the Handgun Protect You and Your Family?*, in HANDGUN CONTROL STAFF TECHNICAL REPORT 2 (1976). However, it is likely that this figure understates theft from non-commercial sources. Commercial sources are more likely than individual gun owners to know the serial numbers of the guns stolen. Without the serial number, the gun will not be entered into NCIC.

¹²⁵ Interview 7 in Bunter, North Carolina (April 1994).

me at home when I was high."¹²⁶

"I'd see something [a gun] that someone had that I liked, then later I'd take it."¹²⁷

E. ARE GUNS STOLEN BY SPECIALISTS?

It is an interesting question whether stolen guns are typically just part of the loot scooped up by burglars and thieves, or whether they are stolen by those who are specifically looking for guns to steal. Wright and Rossi found in their survey of prisoners that 24% who had stolen guns had, at the time, been looking specifically for guns to steal.¹²⁸ Our evidence on this subject is somewhat scanty, but it suggests that specialists are quite important in this arena.

We did a special study of residential break-ins where guns were stolen in two Triangle cities, Durham and Garner. In nine (47%) of the nineteen cases we reviewed, except for cash, guns were the *only* items taken.¹²⁹ The delinquent boys we interviewed reported that they knew several drug addicts who supported their habits by stealing guns when there was a market for them.¹³⁰

F. REDISTRIBUTION OF STOLEN GUNS

Stolen guns differ from other stolen goods: the thief may be able to use the gun himself, he can easily transport it to the buyer, and he is likely to know individuals who are interested in buying a gun.¹³¹ Therefore, in the redistribution of stolen guns there is less need for a middleman than would be true for jewelry, silver, or collectors items. Professional fences and pawn shops do not appear to be critical links in this illegal market.

Professional fences are typically businessmen who deal in large quantities of goods, often stolen from trucks or warehouses.¹³² Fences

¹²⁶ Interview 10 in Bunter, North Carolina (April 1994).

¹²⁷ Interview 8 in Bunter, North Carolina (April 1994).

¹²⁸ See WRIGHT & ROSSI, *supra* note 13, at 194.

¹²⁹ Our sample included all relevant cases from Garner and every 20th case from Durham.

¹³⁰ See Appendix for details, available from the authors.

¹³¹ When inmates sold or traded the guns they had stolen, they generally did so to friends or other trusted persons. The juveniles both supplied guns to and obtained guns from an informal network of family, friends, and street sources. See Wright et al., *supra* note 14, at 84-89.

¹³² The professional fence described by Klockar said that 75% of his business came from truck drivers. CARL KLOCKAR, *THE PROFESSIONAL FENCE* 113-15 (1974). Volume is especially important for specialty items: specialty dealers (who deal with only one item) have a knowledge of that product. "The dealer in stolen jewelry is a jeweler, the dealer in stolen autos is an auto dealer. . . . Specialist dealers are generally under economic pressure to deal in large quantities of their particular item." *Id.*

may profit from the distribution of stolen property because they are in a better position than the thieves to both locate buyers and to value the goods appropriately.¹³³ Although fences may be involved in the distribution of stolen guns, many choose not to. Most often, guns are stolen in small numbers from residences or small businesses and thus do not rise to a quantity which would be profitable for a professional fence who is accustomed to dealing in large quantities. Furthermore, guns pose special risks because they are more readily traced than a piece of jewelry or a box of sweaters.

Like fences, pawn shops are not likely to be principal players in the distribution of stolen guns. In North Carolina, pawn shops are regulated and monitored by the police.¹³⁴ Still, it appears that some pawn shops deal stolen guns under the counter.¹³⁵ But usually, thieves who steal guns, which they may pass themselves or keep for their own consumption, do not need a receiver.¹³⁶ Even the very young offenders we interviewed had a good understanding of the value of various guns and knew where they could buy and sell guns.¹³⁷

It is not surprising to discover that some drug dealers are actively engaged in buying and selling stolen guns. As our informants reported:

"That's what I did, sell drugs. Crack fiends stole guns from houses, cars, and pawns and brought them to me for drugs. I'd sell the guns to anyone who needed them."¹³⁸

"I traded a 9mm for a half loaf of cocaine [cocaine worth \$1,000]." You can swap anything for drugs."¹³⁹

"People who steal things sell them to drug dealers. . . . [As a drug dealer] I wouldn't mess with a gun that was stolen, but nine times out of ten other drug dealers would take a stolen gun. For some [guns] that I gave away I got drugs, but not as much drugs as the guns were worth."¹⁴⁰

¹³³ Thieves who sell their goods to fences are "frequently inept and usually ignorant of the market for what they have to sell. . . . [The thief] may have no real knowledge about the product he has in his possession. If the item is not labeled, he may have no idea of its price. Judgments about quality, market demand may well be impossible for the thief. With items marketed to a social class different from his own, or items specific to a particular industry, he may have no notion of their price." *Id.*

¹³⁴ Pawn shops are required to report the serial numbers of all pawned goods to the local law enforcement officials. The numbers are then checked by officials to see if any of the goods are stolen.

¹³⁵ Bill Bridgewater described an incident in which pawn shops in North Carolina collected guns for a Hell's Angel's gang which then ran the guns to Washington, D.C. Telephone interview with Bill Bridgewater, Executive Director, National Alliance of Stocking Gun Dealers Association (March 1994).

¹³⁶ See KLOCKAR, *supra* note 132, at 113-15.

¹³⁷ See Appendix for details.

¹³⁸ Interview 1 in Bunter, North Carolina (April 1994).

¹³⁹ Interview 8 in Bunter, North Carolina (April 1994).

¹⁴⁰ Interview 5 in Bunter, North Carolina (April 1994).

"I would only trade drugs for a gun if I wanted the gun, if it were one I didn't already have, but no one would ever turn down an AK-47. Once I traded \$50 drugs for a 9mm. That gun would have cost me \$239 at a pawn."¹⁴¹

Some guns acquired by drug dealers are passed within the drug dealing chain, sold to bigger dealers, or given to smaller dealers for protection.

"I sold drugs and guns. Sometimes I'd trade drugs for guns. The guns I sold to bigger drug dealers."¹⁴²

"I sold guns and drugs, but not to the same people because the gun might be used against me. I sold the guns to bigger drug dealers."¹⁴³

"Sometimes the big man will give you a gun. Most of the time he does. It's yours to keep. He does it because he wants to protect his drugs."¹⁴⁴

G. WHAT CAN BE DONE?

The half million guns stolen nationwide each year represents one of the principal sources of armament to youths and criminals. The fact that stolen guns are easily transported and have a ready market make them especially attractive targets to thieves. The pursuit of guns by "specialists" may well increase the number of break-ins. Reducing gun theft should be a high priority on the national agenda.

Given the existing prevalence of guns in the community, there are three approaches to reducing gun theft: owners could exercise more care, courts could give higher priority to gun theft cases, and law enforcement agencies could launch undercover operations.

Owners. One reform that may cut into retail theft is to require FFLs to keep guns in special locked cabinets, or otherwise protect their stock of guns and ammunition against theft.

Courts. The courts could adopt a guiding principle that the theft of guns is a more serious crime than theft of other items of similar value. Cases involving gun theft would then be given higher priority in investigation and prosecution. This change in behavior could be accomplished with or without new legislation.

Currently, in North Carolina this principle has been implemented in drug-dealing cases. When there is evidence that the dealer carries a gun or handles guns, the case is referred to federal court, where the sentences are typically more severe than in state court.¹⁴⁵

¹⁴¹ Interview 10 in Bunter, North Carolina (April 1994).

¹⁴² Interview 8 in Bunter, North Carolina (April 1994).

¹⁴³ Interview 10 in Bunter, North Carolina (April 1994).

¹⁴⁴ Interview 10 in Bunter, North Carolina (April 1994).

¹⁴⁵ 18 U.S.C. § 924(c)(1) (1994): "Whoever, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime which provides for an enhanced punishment if committed by the use of a deadly or dan-

Undercover work. Stolen guns tend to mingle with other guns in the secondary market. Police investigations into illegal dealing by scofflaw dealers, motorcycle gangs, drug dealers, and others active in the illicit side of the secondary gun market will sometimes find that the guns are stolen; this factor both strengthens the case and increases the liability of the suspects.

Law enforcement agencies occasionally run sting operations against thieves. We spoke with several officers about the prospects of launching such an operation specifically targeted against thieves who had guns for sale. One problem they noted is that the undercover officers in a sting may be at risk; dealing in guns may be more dangerous than dealing in jewelry and appliances.

VII. EXTENDING REGULATION TO SECONDARY MARKETS

Currently, there is little regulation of gun transfers in the secondary market, even when required by law. For example, a North Carolina law requires any individual purchasing a handgun to have a pistol permit, but none of the sheriff departments in the Triangle area attempt to enforce this law with respect to secondary sales.¹⁴⁶

Proscribed individuals obtain firearms in the secondary market in some of the same ways as those who are entitled to buy firearms.¹⁴⁷ Family members are an important source of guns, which may be gifts, loans, or purchases.¹⁴⁸ Strangers find each other through gun shows and classified ads.

A. FAMILY AND FRIENDS

Surveys suggest that family and friends play a key role in supplying proscribed individuals with firearms. Thirty-eight percent of high school students across the country and 61% of inner-city students obtained their most recent gun from friends or family.¹⁴⁹ For criminals, friends and family are also important sources of guns; 36% of delin-

gerous weapon or device) for which he may be prosecuted in a court of the United States, uses or carries a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime, be sentenced to imprisonment for five years. . . ." The law mandates that this sentence cannot be suspended. *Id.*

¹⁴⁶ During February 1994, Stephanie Molliconi called the sheriffs' offices in the three counties to make a general inquiry about whether she should obtain a permit in order to "buy a handgun from a friend." None of the deputy sheriffs she talked to indicated that it was mandatory that she obtain a permit.

¹⁴⁷ Wright et al., found that youth and adult offenders obtain guns through similar methods, and that informal, off-the-record transactions predominate. See Wright et al., *supra* note 14, at 85-89.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

quent youths and 44% of adult prisoners said that they got their most recent gun from a friend or family member.¹⁵⁰

As a practical matter it is difficult to limit transfers between friends, let alone family members. One tactic for discouraging such transfers is to make the owner liable if he knowingly transfers a gun to a proscribed person. Liability, either civil or criminal, coupled with a registration system, would provide some incentive for owners to exercise care in selling or loaning out their guns.

But youths are not on the list of proscribed people, even if they have a record of serious delinquency.¹⁵¹ While federal law prohibits licensed dealers from selling to underage buyers, there is no such restriction on sales by non-dealers. North Carolina and most other states have no special restrictions on possession of guns by youths.

B. GUN SHOWS

Gun shows are held across the country in convention centers and other large halls. There are hundreds of such shows each year, where thousands of guns change hands. In North Carolina, both FFLs and non-dealers may sell guns at a gun show. However, in other states, local regulations allow only licensed dealers to sell guns.¹⁵²

We attended a gun show in Greensboro, a city just outside the Triangle region, on February 5, 1994. Seven hundred tables had been rented for \$45.00 each in the Greensboro Coliseum. According to show sponsors, 10,000 people attended the weekend show.

All types of guns, ammunition, and gun-related items, such as kits for converting semi-automatic weapons into automatic weapons, and suppressers were for sale.¹⁵³ Guns were sold not only at the tables, but also in the aisles and in the lobby.¹⁵⁴ Most transactions were in cash. At the tables, licensed dealers appeared to be filling out yellow BATF

¹⁵⁰ See WRIGHT & ROSSI, *supra* note 13, at 183.

¹⁵¹ In North Carolina, most defendants under age sixteen are tried as juveniles and cannot acquire the sort of criminal record that would disqualify them from possessing a gun.

¹⁵² Dallas, for example. See Sylvia Martinez, *Council Rejects Weapon-Sale Ban at Gun Shows. But Members Agree to Monitor Events at City-Owned Facilities More Closely*, THE DALLAS MORNING NEWS, April 15, 1993, at 38A.

¹⁵³ The type of guns vary from show to show. At the show we attended, the guns on sale were predominately long hunting guns. The tables with the most handguns, new and used, were those run by pawn shops. There were a few assault rifles on sale and at least one fully automatic weapon for sale. One fully automatic rifle advertised for sale was carried in the aisles by a man visiting the show. In addition to firearms, many types of ammunition were available. Black Talon bullets and other hollow tips were especially common.

¹⁵⁴ Some people attending the show wore guns strapped to their bodies, often with signs indicating the guns were for sale and the price. Others attending the show carried pistols in gym bags that were also offered for sale.

forms and asking for permits when they sold handguns. We saw no paperwork in any of the sales in the aisles or lobby.

So lucrative are these gun shows that they are the principal avenue of gun sales for a group of FFLs referred to as "gun show cowboys." According to Bill Bridgewater of the National Alliance of Stocking Gun Dealers, gun show cowboys take several hundred new guns, predominately small automatic pistols, to a gun show each weekend. They often travel out of state in pursuit of lucrative shows. These dealers might have business cards and receipts with an in-state address in order to give the appearance of being authorized local dealers.

In principle, it would appear straightforward for BATF or state and local officials to police gun shows and enforce the rules governing firearms transfers. In practice, there is no agency in North Carolina that accepts responsibility for this task.¹⁵⁵

C. NEWSPAPERS

In some cities, the large volume of classified ads for firearms suggests that local newspapers play an important role in facilitating both primary and secondary gun sales. Classified ads, like guns shows, make secondary market transactions visible to potential buyers and, if they are interested, to law enforcement officials. In Texas, such ads are common. Both the Fort Worth and Dallas papers have sections in the classified ads specifically devoted to gun sales. In Denver, both major papers run hundreds of classified ads for guns each week. Advertisers include gun shows and retailers as well as individuals selling from their homes. *The Denver Post* recently announced that it would no longer run ads for semi-automatic assault weapons, but *The Rocky Mountain News* still carries ads for AK-47s and similar weapons.¹⁵⁶ In the Triangle area, nine of the ten local newspapers accept classified ads listing guns for sale, yet few ads are actually purchased.¹⁵⁷ We doubt that this institution is an important source of guns to proscribed people in the Triangle area.

D. OUTLAWING THE SECONDARY MARKET

One comprehensive approach to regulating the secondary market is to require all gun transfers to be conducted through a licensed

¹⁵⁵ Conversation with Bill Bridgewater, Executive Director, National Alliance of Stocking Gun Dealers Association (July 19, 1995).

¹⁵⁶ See Steers, *supra* note 54, at 1A.

¹⁵⁷ In the principal paper for the area, the *News & Observer*, ads for firearms are listed in the sporting goods section of the classifieds. No ads were found in the Sunday, July 23, 1995 edition. Only two ads were found in the Sunday, June 11, 1995 edition. The ads included a Springfield Rifle and a Beretta 92FS "like new."

dealer or law enforcement agency. All legal transfers would then be governed by the same permitting and paperwork requirements currently required for FFL sales. This approach closes the largest legal loophole in the regulatory structure. Of course, changing the rules in this fashion would not eliminate the secondary market overnight. But it would become easier to police the secondary market if every transaction in that market were technically illegal.¹⁵⁸

VIII. CONCLUSION

This article has mapped out a particular perspective on the problem of keeping dangerous people from possessing guns. Some of the main analytical conclusions are these:

*When it comes to the criminal misuse of firearms, the stock of guns is less important than the flow. Effective regulation of transactions would quickly reduce gun crime.

*Guns are readily exchanged for cash or drugs. They have value to the owner in trade as well as in use. Youthful offenders and adult felons tend to be quite active in both sides of the gun market.

*There is no FFL involved in a large minority of the gun transactions each year, and such transactions are largely beyond the reach of the current regulatory apparatus.

*A large percentage—perhaps a majority—of the transactions that supply guns to proscribed people involve stolen guns. Half a million guns are stolen nationwide each year. There is a ready market on the street for stolen guns, one that does without “middlemen” to a greater extent than is true for other merchandise. The market for stolen guns does overlap with the illicit drug market.

*Despite its incomplete reach, regulation of FFLs does influence the terms on which guns are available in the secondary market. More stringent regulation of sales by FFLs increases prices of guns on the street. Higher prices should persuade some youths and criminals to “economize” in their gun possession.

*There are a variety of measures that would help reduce availability of guns to youths and criminals:

1. Both federal and state government can adopt reforms to increase the licensing fee for FFLs and regulate them more closely.

2. Local law enforcement agencies should give higher priority to burglaries and other crimes where guns are stolen.

3. Gun shows should be regulated or abolished.

4. The state or federal government could require all transactions to be channeled through FFLs or a government office.

¹⁵⁸ See KLECK, *supra* note 43, at ch. 11.

This research began with the expectation that law enforcement agencies would be as well informed about the secondary markets for guns as they are about the illicit drug trade. However, there is very little systematic information—"intelligence"—about the gun trade. If state and local officials were to decide that they should make keeping guns from children and criminals a higher priority, a good place to begin would be a more systematic data collection effort. This would be the law enforcement counterpart to the gunshot "surveillance" systems that are being proposed by the public health community. Surveillance for gunshot cases would be based in the emergency rooms and medical examiners' offices, and would provide systematic information on the damage guns inflict. But guidance on how to go about reducing that damage will require information on which licensed dealers are selling under the counter, which drug dealers are taking guns in trade, where youths are obtaining their guns, and so forth.

Developing a useful market surveillance system requires a planning process that would involve representatives from state and local law enforcement agencies and BATF. It is our hope that this Article will serve as a useful road map in this effort.

Table 1
LEGAL STATUS OF GUN TRANSACTIONS

	PRIMARY (FFL SALE)	SECONDARY (TRANSFER BY NON-FFL)
LEGAL	*Buyer is underage, out-of-state, or proscribed, but declares his eligibility and has suitable ID	*Nondealer sells to stranger with no ID, and no record of sale is kept *Loan or gift to any family member, including youth under age 18
ILLEGAL	*Sale conducted under-the-counter, no paperwork *FFL knows buyer is ineligible *Buyer is obviously straw purchaser for youth or criminal	*Any sale by unlicensed dealer *Sale of stolen gun by thief *Seller knows buyer is criminal

Table 2
GUN THEFTS IN THE TRIANGLE, 1992

CRIME TYPE	OFFENSES	OFFENSES IN WHICH GUNS WERE STOLEN	PERCENT OF OFFENSES	TOTAL GUNS STOLEN
RESIDENTIAL BURGLARY	7,094	481	6.8	904
COMMERCIAL BURGLARY	4,722	84	1.8	143
THEFT FROM VEHICLES	2,737	122	4.5	149
OTHER LARCENY	18,660	325	1.7	364
ROBBERY	1,870	12	0.6	14
MOTOR VEHICLE THEFT	2,232	11	0.5	11
PARTIAL TOTAL*		1,035		1,585

* This table excludes college campuses, Durham County Sheriff, and Chapel Hill Police. For Raleigh the division of total guns between commercial and noncommercial burglary is estimated.