

**Enforcement Strategies to Keep Guns
from Offenders and Off City Streets**

DRAFT

Mark H. Moore

Table of Contents

I.	<u>Introduction</u>	p. 1
II.	<u>Potential Targets and Methods of Gun Enforcement</u>	p. 7
A.	Criminal Liability in the Distribution and Use of Guns	p. 13
1.	The Federal Gun Control Act of 1968	p. 16
a.	Control of Distribution	p. 16
b.	Control of Possession and Use	p. 20
2.	State Laws	p. 21
a.	Control and Distribution	p. 21
b.	Control of Possession and Use	p. 26
B.	Gun Distribution	p. 28
1.	Sources of Supply	p. 28
2.	Quantitative Estimates of the Supply Sectors	p. 36
3.	Current Path to Offenders	p. 48
C.	Investigative Tactics Against Sources of Supply	p. 51
1.	Regulatory Enforcement	p. 52
a.	Targeting Regulatory Enforcement	p. 53
b.	The Style of Regulatory Enforcement	p. 59
c.	The Implicit Standard of Care	p. 66
d.	Federal or State Jurisdiction	p. 70
2.	Gun Possession and Use	p. 72
3.	Strategies Against Illegal Possession and Carrying	p. 81
D.	Summary: Targets and Strategies	p. 87

III.	<u>Current Enforcement Capabilities</u>	p. 91
A.	Federal Enforcement Capacities	p. 91
B.	State and Local Enforcement	p.102
1.	Proactive Patrol and Weapons Enforcement	p.105
2.	Proactive Weapons Enforcement, Race, and Youth	p.109
3.	Feasibility and Efficacy of Pro-Active Local Gun Enforcement	p.111
IV.	<u>Promising Experiment in Gun Enforcement</u>	p.113

I. INTRODUCTION

The search for a sustainable, effective gun control policy continues amid swirling controversy. On one hand, high levels of robberies, domestic homicides, and aggravated assaults give impetus to proposals for tighter controls. On the other, the determination of gun owners to protect opportunities for self-defense, recreation and collecting makes equally strong claims on public law makers. The result is an impasse whose stability mocks the passion stirred by the debate.¹ The "Great American Gun War" is trench warfare at its most frustrating.²

What makes the situation even more tragic is that the war is being fought for the wrong purposes over the wrong terrain. The matter is now cast as a competitive struggle between those who loathe guns and seek to ban them, and those who crave guns and wish unlimited access to them. The alternative would be to see the issue as a cooperative search for policies designed to minimize criminal uses of guns while protecting legitimate uses.³ The central arena is now the federal government where rural and Western influences can make powerful claims, and where enforcement capabilities are inevitably small relative to the national demands.⁴ The alternative arena would be urban governments where the balance between interests in crime control and private access to firearms gives greater scope to gun control policies, and where enforcement resources in the form of local police departments are much more plentiful. And the central focus is

on shrinking the supply of handguns -- a goal that seems particularly Quixotic given that 20-40 million handguns are already in private hands.⁵ The alternative is to think in terms of managing who has access to these guns and how they are used.

One way to end the current impasse, then, might be to open an alternative front. The general idea is to shift attention from the focus on federal legislation directed at the supply of handguns to the possibilities of using local police departments to enforce existing statutes. The basic aims would be to keep guns out of the hands of criminals and off city streets.⁶ As a strategy for gun control, this approach gives more room to maneuver in political, substantive, and administrative terms. This is true for three reasons.

First, the basic goals of this policy should command relatively broad political support. At a strategic level, the policy aims both to minimize criminal uses of handguns and to preserve legitimate uses. Of course, neither pro nor anti gun people get exactly what they want. Instead, each must give up a little of their interest for the sake of the broader community interests in controlling crime and maintaining legitimate uses of guns. At a more programmatic level, the goals seem equally supportable. Keeping guns from criminal offenders seems an unexceptionable objective. Pro gun groups have always distinguished sharply between criminals and law-abiding citizens, and have urged that guns be kept from offenders. While anti-gun groups might wish to go much further in denying access to guns, and might doubt the

effectiveness of such limited restrictions, they can hardly object to the basic goal.

The objective of keeping guns off city streets is somewhat more controversial. Pro gun groups continues to insist on the importance of carrying weapons in city streets for purposes of self-defense. But many others accept the basic idea that guns can be more or less dangerous (and more or less beneficial) in some places than others, and that city streets are one of the most dangerous (and least beneficial) places to carry guns. Moreover, the frontier tradition of checking guns with the sheriff, and the modern success of airline magnetometers offer precedents in support of the basic idea that guns should be kept off city streets.⁷ So, while the programmatic goals are not necessarily free from controversy, they can plausibly command allegiance not only from the broad center of the community, but also from the gun militants -- both pro and anti.

Second, much of the institutional infrastructure necessary to carry out such a policy is already in place waiting to be mobilized. Statutes now exist at federal, state and local levels which prohibit certain classes of people from acquiring, owning or using guns, and impose penalties on those who possess and use guns contrary to the law or who knowingly transfer guns to prohibited persons.⁸ In many places statutes also exist which outlaw the carrying of weapons without special licenses or provisions (such as carrying in a locked box). In addition, about 400,000 local policemen are potentially available to

enforce these statutes.⁹ This number dwarfs the 2,000 federal agents committed to this task. Moreover, while one might reasonably doubt the effectiveness of this force in enforcing gun laws, it seems significant that local police agencies now make about three times as many arrests for violations of the narcotics laws as for weapons offenses.¹⁰ While this fact might indicate nothing more than a higher underlying rate of narcotics offenses, the figures are also consistent with the hypothesis that local police search a little less aggressively for weapons violations than for narcotics violations. If this hypothesis were correct, some unexploited potential for local enforcement against weapons offenses would clearly exist.

Third, a strategy of keeping guns from criminals and off city streets could plausibly have an effect on crime at tolerable levels of inconvenience to legitimate gun owners. Of course, there is a price to be paid for protecting a large legitimate sector of gun ownership. Through thefts and negligent transfers from lawful owners to offenders, a legitimate sector inevitably becomes the source of supply for many guns used by criminal offenders. In addition, to the extent that a legitimate sector is protected, many crimes once thought to be the primary target of gun control policies -- namely, household assaults that become accidental homicides -- will remain beyond the reach of gun control policies. This is true simply because such crimes are most often committed in private spaces by people who are entitled to own their weapons.

But even with these limitations, there is a piece of the crime problem that remains vulnerable to this basic strategy: street robberies and assaults committed with firearms in public places. Needless to say, such offenses are an important part of the crime problem. Indeed, to many, such offenses are its very heart. These offenses are vulnerable to policies that keep guns from known criminal offenders because these crimes are most often committed by people with prior criminal records.¹¹ They are vulnerable to policies that keep guns off city streets because the offenses occur in public locations. Moreover, one need not assume that such policies would be perfectly effective to imagine that they could produce some beneficial results. While some of these offenses are undoubtedly committed by quite determined offenders for whom the task of acquiring and carrying a gun to the scene are trivial parts of a more elaborate plan, it is also true that the majority of street assaults and robberies are committed by less determined people with no specific plans who might be discouraged from committing the offenses by the modest inconvenience of acquiring a gun and the minor risk of arrest while carrying illegally.¹² So, there is a piece of the crime problem, and a kind of offender, that might be vulnerable to policies designed to keep guns out of the hands of criminal offenders and off city streets.

The enthusiasm for stepped-up local enforcement of gun laws emerges from an analysis of gun control policies. In that context, the policy has appeal at least partly because all the others are so

bad. As Winston Churchill might have said, a policy of keeping guns out of the hands of offenders and off city streets is absolutely the worst form of gun control policy except for all the others. Once one has this policy squarely in one's sights, however, and begins thinking about what successful implementation requires, the context suddenly changes to "policing" rather than "gun control." And once one thinks about this policy in the context of policing, new issues are raised. One is the availability of resources to undertake a new and challenging enforcement task. A second is the vast potential for discriminatory enforcement and citizen hostility associated with the aggressive patrol methods that might be necessary to keep guns off city streets. In the context of policing as it is currently understood and analyzed, then, the idea of local enforcement of gun laws seems at first blush much less appealing.

Obviously, to make an effective case for the attractiveness of local enforcement of gun laws, both issues must be resolved. The policy should look attractive not only in the context of gun control policies, but also in the context of policing. The question of whether and how local gun enforcement strategies can be fitted into the modern context of policing is precisely what we mean to explore. We will do so first by considering alternative programs directed at the distribution, possession, and carrying of handguns; second, by analyzing current enforcement practices; and third by imagining some plausibly effective experimental programs in local gun enforcement.

II. POTENTIAL TARGETS AND METHODS OF GUN ENFORCEMENT

In the past, enforcement strategists have given little special attention to gun enforcement. Instead, concepts have been borrowed from the much more familiar world of drug enforcement. Thus, strategists distinguished naturally between strategies directed at illicit suppliers, and those directed at illegal users.¹³ Moreover, our images of "gun runners" matched the images of "drug dealers": they would be sophisticated, profit-maximizing firms that took care to insulate themselves from public view, and could be penetrated only through informants, covert surveillance, or undercover operations. To mount such operations, it would be helpful -- perhaps even necessary -- to create special investigative units that could not only develop the special investigative techniques, but also accumulate the intelligence necessary to guide enforcement operations.¹⁴

On the demand side, we imagined that the world of illegal gun use, like the world of illegal drug use, was filled with people who committed armed robberies and assaults as well as violations of the gun laws. Because illegal gun use was itself a crime, and was particularly likely to be committed by people who committed other kinds of crime as well, an aggressive patrol strategy directed against illegal gun owners could be both effective in controlling crime and justifiable. Moreover, those illegal users who were caught committing street offenses or violating various gun ordinances could be used as informants in the attack on the illegal supply system. In short, in

the absence of any special thought about the matter, a police strategist could simply borrow the drug strategy and use it to deal with guns.

To a degree, the analogy to drug enforcement is helpful. It is useful, for example, to distinguish between distributors and users of guns. It is also important to see that gun enforcement will necessarily involve pro-active enforcement tactics such as informants, undercover operations, and aggressive patrol. But two crucial differences between guns and drugs make gun enforcement more complicated and difficult than drugs because they blur the lines that give a relatively clear focus to the drug enforcement strategy.

The first is that it is very difficult to distinguish "legitimate" from "illicit" dealers and users of guns. In principle, the distinction seems easy. It should be based on legal qualifications, and the motivations of gun dealers and owners. Dealers who think of themselves as ordinary businessmen selling guns to legally qualified people, and who are licensed to do so must be considered legitimate. Similarly, people who buy or own their guns for self-defense or recreational purposes, and are legally entitled to own their weapons, must also be considered legitimate.

The problem, however, is that proper motivations need not reliably line up with legal qualifications. Dealers who are legally entitled to their license may nonetheless be willing, even eager, to deal with people who are prohibited from owning guns. People who are

legally entitled to acquire and own guns may choose to do so with the intention of committing crimes.

The reverse is also true: people with perfectly good intentions may sometimes unwittingly violate gun laws. A gun collector may dispose of his collection at a public or private sale and not know that he has committed a criminal offense. A new arrival to a city may continue to possess and carry a gun as he did in the rural town from which he came, and not know that he is committing gun offenses under the laws of the city. Even worse, the innocent but technically illegal acts can result in very bad consequences. Armed robbers may, in fact, supply themselves through the innocent sale of a private collection. And innocent people carrying guns in the dangerous and aggravating city streets may find themselves involved in criminal violence.

Finally, the existence of plausible stories which establish innocence despite technical violations and bad consequences may provide cover for people who are not in fact innocent. In short, the legal definitions of gun offenses map imperfectly onto behavior in the world that is properly the target of criminal enforcement activity: much behavior that is technically illegal is innocent, or without bad results, or both; much behavior that is badly motivated and has bad consequences escapes criminal liability; and much behavior that is both illegal and badly motivated can nonetheless be made to look innocent. Given these ambiguities, enthusiasm for enforcing gun laws

must be more qualified than for drug laws.

Of course, similar problems exist in drug enforcement -- especially for drugs such as amphetamines and barbiturates which resemble guns in that they have important legitimate as well as illicit uses. As in the case of guns, the existence of a large legitimate sector of drug use endlessly complicates the enforcement problem. There are legitimate dealers (pharmacists and doctors) who commit offenses -- sometimes with guilty intent and sometimes not. And there are illicit users who take advantage of the negligence or gullibility of the suppliers to acquire drugs illegally. And there are some situations in which the suppliers and users conspire to commit offenses, but cover themselves with protestations of innocence. It is probably for these reasons that we are less apt to think of these particular drugs as being central to the drug problem, and less inclined to make them central to our enforcement efforts -- this despite the fact that in any proper social accounting of the costs of drug abuse these drugs would figure quite prominently.¹⁵ It is also interesting that we are becoming more ambivalent about marijuana enforcement activity as marijuana use spreads to populations that are otherwise considered quite innocent. In effect, in drugs as in guns, as the enforcement net embraces acts and people that seem relatively innocent, we are less willing to pull it tight. The effect in the drug area is to narrow our focus to a subset of the drugs that are causing social problems -- primarily

heroin and cocaine. The effect in guns is to dampen enthusiasm for any enforcement at all.

The desire to have enforcement efforts targeted on those who are most culpable also leads to a focus on dealers rather than users, for it is natural for us to think of dealers as evil people profiting from the misery of their customers, and the customers as unfortunate victims. A similar move might seem to be possible in the area of guns. But this idea -- to focus on gun dealers rather than gun owners -- brings into sharp focus the second important difference between guns and drugs: the fact that guns are durable while drugs are consumed. This apparently trivial fact has several important implications for the character of gun enforcement.

For one thing, it means that the distinction between dealers and users becomes blurred. People who are primarily users often become dealers by transferring their weapons. It also means that guns are available to be used for bad purposes more frequently and over a longer period of time than drugs. To produce harmful social results, drugs must be constantly supplied. It takes many transactions to produce the social harms that go along with chronic, intensive drug use. For guns, the situation is quite different. A single transaction can equip a person to do significant social harm over a long period of time. Thus, the relative importance of controlling transactions as against managing the use of the commodity diminishes as one moves from drugs to guns.

What is true for individual dealers and owners is also true in aggregate. Because guns are durable, a sizeable stock of guns exists as well as a flow of new production and consumption. This stock is itself an important target of regulation and enforcement. Who now owns the stock, how it is used, and how it is transferred all become important issues in the design of enforcement strategies. Because drugs are rapidly consumed and inventories are dangerous to hold, there is no problem associated with an existing, durable stock of drugs that can be redistributed and re-used.

Taken together, these observations suggest that the front for gun enforcement is broader and more ambiguous than the front for drug enforcement. One must be concerned not only with the flow of production and distribution, but also with the disposition and use of the existing stock. In the movement of that stock, users become dealers, safe users become criminals, and criminals can continue to commit crimes without having to go back into the market to re-supply themselves. So, we must inevitably concentrate on owners as well as dealers -- partly because they are often the same people, and partly because it is important to manage the uses of guns as well as the supply.

Given these difficulties, it may be necessary to give some special attention to the design of gun enforcement strategies and resist the temptation simply to borrow the drug enforcement strategy. That is the purpose of this section. We will first think about the

structure of the supply system for guns, and what sorts of strategies could be effective in keeping guns out of the hands of criminal offenders. Then, we will examine current patterns of gun ownership and use, and think about what strategies might be effective in keeping guns off city streets. Before looking at the structure of gun distribution, ownership and use, however, it is valuable to describe the basic structure of law that now regulates these matters, for the laws have an important effect on the existing structure, and on the enforcement strategies that can be used to manage the system.

A. Criminal Liability in the Distribution and Use of Handguns

Principles of jurisprudence require that laws creating criminal liability should be set out clearly and concisely so that those subject to the laws can know in advance what is required of them.¹⁶ Anything other than this seems unfair. Despite this injunction, the structure of laws regulating gun distribution, possession and use is anything but clear. In fact, anyone who ventures into this particular legal thicket in search of simple rules setting out a coherent structure of liability backed by sensible penalties is doomed to frustration. Part of the difficulty is that the world of gun distribution and use presents so many different aspects that could become the targets of regulation. Legislators can choose to attack certain kinds of weapons leaving others untouched by regulation; they can regulate different stages of production, distribution, possession, and use; they can divide the worlds of distribution and possession in

many different ways; and so on.

Another part of the difficulty, however, is that the relevant body of law is established at many different levels of government. The most obvious and important distinctions here are among federal, state and local laws. Every level of government in the United States is actively involved in regulating guns, and while it is true that the different levels of government have slightly different emphases in their approach with the federal level concentrating on "commerce" and local levels concentrating on "use," it is also true that there is a great deal of overlap in the body of laws being generated.

But it is also true that the law as enacted is different than the law as implemented and enforced and so beneath the level of statutory language is a whole other level of complexity that concerns enforcement, prosecutorial, and judicial practices that define the "living law."¹⁷ Coming to grips with that "living law" is harder even than understanding the complicated structure of the written law. What probably lies behind all of this complexity, however, is the simple fact that gun regulation is an extremely controversial area of social policy. The implication is that the body of law that is enacted in this area bears all the marks of that disagreement; it shows the signs of hasty compromises and the ebb and flow of interest in one or another aspect of the problem over time rather than a considered, stable shared view of the public interest in this area.

I make these observations not to complain about the institutional

structure of our governmental system. After all, that structure has the special capacity to contain deep disagreements about social policy by always holding out some institutional route that policy entrepreneurs might take in seeking to establish their view of appropriate policy, but never allowing them to do that without dealing with objections from others who have stakes in a given area. And that special capacity is the hallmark of a democratic, federal system.¹⁸ My only purpose in pointing out the difficulties is to absolve myself of some responsibility in trying to give a simple and coherent account of what the accumulated tumble of law-making has now established.

The analysis of current criminal liability will proceed by looking at statutes at the federal, state and local level. With respect to the various levels, we will concentrate on the provisions that regulate transfers on the one hand, and possession and use on the other. We will largely ignore provisions regulating the production, importation, and export of guns because our focus throughout this monograph is on regulating the distribution, possession and use of guns. Finally, we will keep our attention focused primarily on handguns. When we describe criminal liability, we will not distinguish between states that regulate firearms (a broader category than handguns but narrower than weapons) and those that regulate handguns. But states whose regulations are even more narrowly focused and therefore do not touch handguns will be described as not establishing criminal liability. So our task lies not to describe all

the gun control laws in the country, but instead to see if we can discern in the crazy-quilt body of gun control laws approximately how criminal liability is distributed over the activities of handgun distribution, possession and use.

1. The Federal Gun Control Act of 1968

The obvious starting point for our analysis is the Federal Gun Control Act of 1968. It is a convenient starting point because it is important and simple to describe; it applies to everyone in the United States, has some purposes that are fairly coherent and easy to explain, and its provisions are now fairly well understood. Part of the law is concerned with controlling manufacturing and importing, but these provisions will be ignored here. What is of interest to us is exactly how the federal law regulates handgun distribution, possession and use.

- a. Control of Distribution

The central provisions regulating distribution are those that oblige people who are "engaged in the business" of dealing in firearms to obtain a federal license, and to adhere to a set of regulations governing the conduct of their business.¹⁹ These regulations include maintaining a permanent place of business so that they may be located and inspected, keeping records of transactions involving firearms, and most importantly from our point of view refusing to transfer weapons to various classes of proscribed purchasers including convicted felons, adjudicated mental defectives,

addicts, those dishonorably discharged from the military, and illegal aliens.²⁰ Failure to meet these requirements is punishable by civil sanctions including the loss of one's license, but also criminal penalties of up to five years in jail for each violation of the law.²¹ Liabilities are also created on the purchaser's side of the transaction. To purchase a weapon, a customer must fill out a form attesting to his lack of disqualifying characteristics and sign it with his true name and address.²² Misrepresentations and forgeries are offenses which may be punished with five year prison sentences.²³

At first blush, this seems like an imposing structure of criminal liability. Dealers in handguns are brought into a net of obligations that seem to prevent them from transferring handguns to dangerous people, and the obligations are enforced by apparently heavy penalties. Their job of distinguishing proscribed from entitled customers is made easier by obliging customers to give accurate information about themselves on pain of federal prosecution. And the task of enforcing the provisions is made simple by identifying who the dealers are, where they are located, and by requiring them to keep records available for inspection. It looks like a tight structure.

Reflection and experience reveal several major problems, however. One is simply that shifting the responsibility for establishing the bona fides of any given customer to the customer has the effect of limiting the interest and liability of the dealer. As long as he has a signed document from his customer, he is safe from any civil or

criminal action. The statements may be patently false, the dealer may even have colluded with the customer in helping him give false information, but unless there is evidence of recklessness or collusion, the signed paper will protect the dealer.

Much more important than this point, however, is the simple fact that the Federal Gun Control Act fails to establish any legal responsibility for gun owners who are not dealers but who nonetheless transfer their weapons. All of the obligations for record-keeping and prohibitions against knowingly transferring to proscribed dealers attach only to federal licensees. All other transferers are free from these responsibilities. So an important question becomes not only who may become a federal licensee, but who must become one. As to this question, the law requires anyone who is "engaged in the business of dealing in firearms" to acquire a federal license.

The phrase "engaged in the business of dealing in firearms" is hardly a model of precision and clarity. Over time, the courts have found several different characteristics relevant to the question of whether a person was "dealing in firearms." These characteristics have included evidence of persistence in making transactions, a given level of activity such as five guns per year, a profit making interest in the enterprise, and so on.²⁴ But when all is said and done, it becomes clear that a person could be involved in selling, transferring, or exchanging guns and not be a dealer within the meaning of the law, therefore not be obliged to obtain a federal

license, and therefore not be obliged to refrain from dealing with proscribed persons. In effect, the federal law leaves room for private transfers that are entirely unregulated. As long as a person keeps his number of transactions sufficiently low, he can sell a gun to whomever he pleases.

One might think that this loophole is ultimately insignificant either because the volume of transactions flowing through this unregulated sector is small, or because legitimate gun owners who transfer their weapons are unlikely to transfer them to proscribed persons. As we will see below in our discussion of the actual behavior of the supply system, the first point is almost certainly wrong. Indeed, the volume of transfers in this sector is easily equal to the volume of transfers in the licensed sector. The second is closer to being correct. It turns out that relatively few guns used in criminal attacks reach the offender through unbroken streams of private transfers. But even so, the existence of a huge, wholly unregulated sector of gun transfers indicates a significant tear in the web of criminal or civil liability attached to transferors.²⁵

There is one further point to be made about this unexpected gap in federally established liability for gun transferors. In much of the policy discussion concerning federal gun control activity, there is an implicit assumption that too many people now have federal licenses qualifying them to be dealers, and that the world might be better off if it was harder to obtain a federal license. Arguments

are made, usually by gun control advocates, that people have licenses who are not really in the business of dealing in handguns, that they don't therefore deserve their license, that the fees charged are too low, and so on.²⁶ If one is thinking about this issue from a point of view that sees licenses as benefits to people who own guns that should be only grudgingly distributed, and that worries about a federal regulatory enforcement capacity that is being strained by a large volume of inspections, then the idea of shrinking the number of federally licensed dealers might seem desirable. But if, on the other hand, one is thinking of a federal dealer's license as something that confers responsibilities and increases the visibility of gun transactions, then one might well be interested in increasing the number of federally licensed dealers. They, at least, have some legal responsibilities in making transactions. In effect, as the number of federally licensed dealers increases, the structure of federally established liability over gun transferors expands.

b. Control of Possession and Use

While the major thrust of the Federal Gun Control Act is towards gun distribution, it also has provisions directed at possessors of guns. Some attach to the moment of purchasing or acquiring a gun from a federally licensed dealer. As noted above, in this transaction, the purchaser is required to attest to his lack of disqualifying characteristics. If he misrepresents this data or forges any documents used in this transaction, he is vulnerable to

federal criminal penalties. In addition, however, the Federal Gun Control Act prohibits possession of firearms by proscribed persons.²⁷ A convicted felon in possession of a firearm is guilty of a federal crime. So is a person who has been dishonorably discharged from the military and so on. So, the federal law reaches down to possession as well as regulates distribution. It stops short of regulating use. At this stage there is not even a federal law that makes use of a firearm in a crime either a separate offense, or a justification for enhancing penalties of the substantive crime, though such laws have often been proposed.²⁸

2. State Laws

The maze of state and local laws regulating handgun distribution and use defies any simple categorization. Consequently, any general statements about the structure of criminal liability they establish will be inaccurate in some important details for some significant states. Nonetheless, it is possible to review that tangled body of law and discern some important central tendencies and trends.

a. Control of Distribution

Perhaps the most difficult portion of these laws to analyze are those terms that regulate transfers. Ideally, one could define a single dimension called the "stringency" of control over gun transferors, array the various states on this dimension, and calculate the fraction of the general population, or gun owners, or criminal

offenders who lived in sections of the country covered by different degrees of stringency in the regulation of gun transfers. The analytic problem, however, is not only discovering the substantive provisions of the law (a task made difficult by the fact that the laws have been changing and the relevant provisions are lodged in many different parts of state codes), but also in defining what is meant by "stringency" when there are many different features and provisions of the law. In general, one can think of stringency as a function of four different features: 1) the scope of criminal or civil liability in regulating transfers (i.e., which transferors have responsibilities under the laws for conducting transfers in a particular way); 2) the size of the population that is proscribed from acquiring guns from the authorized transferors (i.e., whether it includes the usual proscribed groups such as convicted felons and addicts, or adds violent misdemeanants or public drunks to the list of proscribed persons); 3) the burdens that are placed on dealers to determine whether a specific customer is or is not a member of one of the proscribed groups (i.e., whether the dealer has a burden of satisfying himself that a person is not proscribed from acquiring a gun, must wait to consummate the transaction until he has received information from the relevant state agencies, or has no particular obligation to find out anything about his customer); and 4) the size of the penalties that are meted out if the dealer fails to meet his obligations (i.e., whether offenses are classified as felonies, high level misdemeanors,

or simply violations of ordinances to be punished by fines and other civil sanctions).²⁹

Obviously, if a state is extreme in all these dimensions (i.e., the liability for transfers extends to all transferors, broad classes of potential customers are proscribed, heavy burdens are placed on dealers to determine whether their customers are in fact qualified to buy, and heavy penalties guard these provisions) it is not hard to decide that the state has a stringent structure of liability regulating transfers. The problems arise when the states are tough on some of these dimensions, but lax on others. The reason this is such a problem is that these dimensions are not additive. A state could have very tight controls over licensed dealers, but require only a few large operations to obtain licenses and leave the rest of the private transferors wholly regulated. In such states, there might be a great deal of fierce sounding statutory language, but the real force of the laws would be minimal because of the narrow scope of liability. Other states might establish a broad scope of liability by failing to distinguish between dealers and others (choosing instead simply to regulate transfers no matter who undertakes them), but impose only loose restrictions on the transfers, and only minor penalties for violations. Which of these states should be considered to have the more "stringent" control over distribution is by no means clear.

Table 1 characterizes the laws of those states that have laws regulating handgun transfers in terms of the scope of liability

established, the proscribed classes of customers, the sorts of burdens that are placed on dealers to verify that their customers are qualified to own guns, and the sanctions that guard the various provisions.³⁰ The overall pattern that emerged as one studies the varied state laws might usefully be summarized in the following observations.

First, a little over half of the states have established some level of criminal liability for the improper transfer of handguns. Twenty of these states -- including Illinois, Maryland, Massachusetts, Michigan, New Jersey, New York, Pennsylvania, and Washington, D.C. -- have stretched this liability to include private transferors as well as licensed dealers either by failing to distinguish between dealers and others in their regulation of transfers, or by explicitly including non-dealers in the provisions governing transfers. So the substantial gap left by the failure of the Federal Gun Control Act to regulate private transfers has been partly closed by state laws.

Second, for the most part, the states that proscribe certain people from purchasing handguns tend to proscribe the same groups of people that are proscribed by the Federal Gun Control Act from acquiring a handgun. Convicted felons are the most consistently proscribed group. Minors are also often mentioned in the score of states that regulate transfers. In addition, a few states add drunks, drug addicts, and violent misdemeanants to the list of proscribed. The most extreme law, however, is Washington, D.C.'s which prohibits

TABLE 1
State Regulation of Handgun Transfers

	<u>Scope of Liability</u>		<u>Prohibited Classes</u>	<u>Type of System</u>	<u>Sanctions for Illegal Transfers</u>
	<u>Dealers</u>	<u>Private Transferors</u>			
Alabama	X	?		AP(a)	?
California	X	No		AP	Misdemeanor
Colorado	X	No	None	Records Only	Misdemeanor
Connecticut	X	?		AP	?
Delaware	X	No	None	Records Only	?
Georgia	X	No	None	Records Only	?
Hawaii	X	X		PP	?
Illinois	(No Distinction)		Minors, Addicts, Felons	ID Card Required, AP	A Misdemeanor ?
Indiana	X	X		AP	?
Iowa	(No Distinction)			PP	?
Louisiana	(handguns exempted from all regulation)				
Maryland	X	X	Minors, Felons, Drunks		?
Massachusetts	X	X	Minors, Aliens, Felons, Drug Users	AP	\$1,000 fine
Michigan	X	X		PP	Misdemeanor
Minnesota	X	X		PP	?
Mississippi	(no regulation of dealers)				
Montana	(No Distinction)			PP	?
New Jersey	X	X		PP	?
New York	X	X		License Required	A Misdemeanor
North Carolina	X	X		PP	Felony: A Misdemeanor
Ohio	(No Distinction)		Few Proscriptions		Felony: A Misdemeanor
Oregon	X	X	Private Transferors May Sell Only to Dealers or Friends		?
Pennsylvania	X	X		AP	A Misdemeanor
Rhode Island	X	X		AP	A Misdemeanor
South Carolina	X	No		N.	?
Tennessee	X	X		AP	?
Texas	(No Distinction)		Minor, Drunk	No Records	A Misdemeanor
Washington	X	X	Minor, Drunk	AP	Misdemeanor
Washington, D.C.	X	X	No Transfers Allowed		\$1,000 fine
West Virginia	(No Regulation of Dealers)				

AP = Application to Purchase: Customer submits forms; If no objection after period of time, may complete transaction

PP = Permit to Purchase: Customer submits forms; Must receive explicit authorization

Rewards Only = Dealer required to keep records: No review before purchase

N = Notification of Authorities: Information about transaction submitted to authorities; I.D. card on license required; Customer must have license from State Authorities to purchase

any transfer except within a family. Interestingly, Oregon's law seems to establish an equally strict restriction on private transferors, though licensed dealers are allowed to sell more widely. Thus, the line between entitled and proscribed users is about the same in state laws as it is in the Federal Gun Control Act.

Third, only nine of the states require the transferor to receive explicit authorization from state record-keeping authorities before completing the transaction.³¹ Illinois and New York require purchasers to have I.D. cards or licenses given by a state authority before they can make a purchase. Seven other states require that some state authority (usually local police) verify that the customer has no disqualifying characteristics before completing the transaction. An additional nine states provide for a waiting period within which authorities can respond and block the sale, but unless they do respond, the transaction will be completed. So, about 18 states including more than half the U.S. population give local authorities a chance to block sales if they involve proscribed persons.³²

Fourth, the common sanction associated with violations of these regulations seems to be a high misdemeanor. A few states make some violations low felonies, and a few others set ceilings at middle or low range misdemeanors. But the norm seems to be high misdemeanors. Typically this means imprisonment from six months to a year, and/or fines in the \$1,000 to \$5,000 dollar range.

With respect to handgun transfers, then, about half the

population lives in states where a negligent transfer of a handgun to a proscribed person might make them vulnerable to six months to a year in prison. If this comes as a surprise to most readers, it is likely that it comes equally as a surprise to most enforcement agencies because the fact of the matter is that these laws are very rarely enforced. We will discuss this fact more extensively in Section III, but it is interesting to note here that of 20,000 weapons arrests made in New York State from August, 1980 to June, 1981, only 15 involved charges for illegal sales or transfers.³³ While the liability exists in the law, it may not exist on the streets.

b. Control of Possession and Use

State laws regulating possession and use of handguns are much more straight forward and easy to understand. Ironically, for the most part, states are more lenient with respect to gun possession than the federal government. Illinois, Massachusetts, New York, Hawaii, Michigan, Mississippi, and Washington, D.C. all require permits to own handguns, and these are given out only to those who are not proscribed. But most other states are silent on the question of owning a gun and keeping it in one's home or place of business. The federal government, on the other hand, prohibits possession by the same people who are proscribed from acquiring weapons. (The one exception to this rule is that under federal law minors are prohibited from receiving handguns, but not necessarily from possessing them.) Presumably, the lenient stance of the states towards possession of

handguns and firearms reflects an interest in allowing citizens to make their own arrangements to enhance their personal security as long as those arrangements do not interfere with others.

This lenient posture towards possession at home or at one's place of business stands in marked contrast to the various states' positions on carrying weapons outside one's home or place of business. As my colleague Philip Cook reports:

"Every state except New Mexico imposes some sort of restrictions on carrying a concealed gun. In most states carrying concealed is either prohibited.., or else requires a special license. Such licenses are usually issued on a restrictive basis.."34

It is a little difficult to explain this marked difference in attitude towards carrying compared with possession -- particularly when gun advocates argue that the self defense benefits of carrying a gun are at least as important as those associated with possession. Apparently, when most state legislators weigh the self defense benefits of carrying a weapon against the potential hazards that widespread carrying of handguns might cause, they decide that the benefits are not worth the risk. They make a different calculation and come to a different conclusion when they are thinking about possession. Perhaps they are guided in making this judgment by the recognition that even on the frontier cowboys were obliged to check their guns when they came to town. At any rate, existing state laws are very strict about carrying, and the laws are guarded most often by penalties in the low felony or high misdemeanor range.

B. Gun Distribution

The laws regulating the distribution of handguns, like those regulating taxicabs and taverns, influence the structure of the supply system. Part of the influence is definitional: the laws place distributors in specific legal categories, each with its own rights and responsibilities, and each with its own vulnerability to enforcement activities. But another part of the influence is behavioral: by creating different legal categories, economic incentives are created, and with them, certain market niches. Just as taxicab regulation creates opportunities for gypsy cabs, and alcohol regulation, after hours bars, gun regulation may create special markets in guns. Taken together, the definitional and behavioral effects determine the structure of the distribution system. Taking the measure of that structure is important to designing enforcement strategies to keep guns out of the hands of criminal offenders because it is through leaks in that structure that criminal offenders will arm themselves. Indeed, a useful way of developing intuitions about potential leaks to criminal offenders is to imagine how they could acquire guns in a world that was regulated precisely to prevent this from happening.

1. Sources of Supply

Avenues available to criminal offenders to acquire a gun depend, in the first instance, on their legal qualifications. That a criminal offender might be entitled to acquire a weapon might, at

first consideration, seem strange. But legal qualification typically depends on nothing more than the absence of a criminal record. And it is both logically possible and empirically commonplace that people without prior criminal records would commit gun crimes.³⁵ Some may be frequent offenders who have not yet been caught and convicted of crimes. Others may be one-time offenders who have never before committed an offense, and in all likelihood will never commit another. Indeed, such one-time offenders are particularly common among those who commit the tragic domestic assaults which figure so prominently in our conception of gun crime.³⁶ Obviously, if an offender is legally qualified, he may buy a gun from a licensed dealer just like anyone else. Given that this transaction would create a record of his purchase, and that record might become evidence in a criminal case against the offender, a person who knew he was going to commit an offense might prefer a different, more discrete source for his weapon. But for those who are legally entitled, and either don't know that they are going to commit an offense, or for one reason or another don't care that a record of their purchase is being made, a potential source of supply is a legitimate transaction in the licensed sector of gun dealing. In short, some guns used in crimes will be supplied to the offenders through perfectly lawful transactions in the licensed sector.

Even if a person is legally proscribed from purchasing a handgun, he may still be able to arm himself through a licensed dealer. A

proscribed purchaser could penetrate the licensed sector in one of three ways. One is for the proscribed purchaser to lie convincingly about his qualifications. A second is to find a dealer who is unable or disinclined to make the effort to determine whether the customer was entitled to purchase a handgun. A third is to find a dealer who would actively collude with the proscribed person and sell a gun under the cover of ignorance. This list forms a progression in which the culpability of the dealer increases: his status changes from innocent dupe, to negligent licensee, to criminal offender. And while these distinctions can be made precisely, and refer to real differences in the world, exactly which of these things has happened in any given case of a proscribed person acquiring a gun from a licensed dealer is quite uncertain. Indeed, it is precisely this ambiguity about the knowledge and motivation of the licensed dealer that gives scope to proscribed customers in acquiring guns from the licensed sector. If a stricter standard of care were established for licensed dealers, it would be harder for badly motivated dealers to hide behind claims of innocence, and there would be much less scope for proscribed customers to arm themselves in the licensed sector.

Even if the licensed sector could be sealed against proscribed customers, however, the proscribed customers would not necessarily have to resort to a specialized black market. It might be possible for them to acquire a gun from private individuals who were willing to sell, lend or even give weapons to otherwise prohibited individuals.

As noted above, under federal law, such people have no obligations except to avoid knowingly selling to an out of state resident, and to obtain a license if they sell guns often enough to be considered dealers. But that is the extent of their obligations. In a few states, private transferors of handguns are obliged to report transfers of handguns, but the penalties for non-compliance are quite modest.³⁷ Thus, private gun owners risk little in transferring their weapons to proscribed buyers even if the buyers are known to be proscribed. Again, purchasers who expect to commit offenses may prefer a more anonymous or more discrete source than a friend or acquaintance who happens to have a gun. But in a pinch, or in situations where they don't care, private owners may be a perfectly acceptable source of supply.

If private owners are unwilling to sell or lend their guns, they could still become suppliers of guns to proscribed persons, albeit unwittingly, by becoming victims of theft. Sometimes the thefts could be arranged by offenders who wanted to acquire untraceable guns. Other times, the thefts might occur as part of an ordinary burglary -- with the burglar keeping the gun for himself, transferring it to one of his pals, or turning it over to a fence along with many other stolen items. In any of these events, a gun could move from the legitimate sector into the hands of proscribed persons.

The last route by which a criminal offender could arm himself is through a specialized black market. That such markets would exist is

commonly assumed by enforcement strategists. Their belief is sustained by three observations. First, economic analysis tells us that if a demand for certain commodities exists, and the mechanisms that are set up to suppress or ration the supply operate imperfectly, than a black market will spring up to meet the demand.³⁸ In the case of guns, we imagine that a special set of institutions will spring up to service the demands of criminal offenders who are barred from other sources, and who might want special features (such as untraceability) in the gun they purchase. Second, occasionally enforcement agencies stumble over large scale, durable organizations that seem to be in the business of dealing in guns. True, most seem to be engaged in exporting guns to foreign countries, and those that are not are most common around New York City which has the most stringent gun laws in the country.³⁹ But, still, there are criminal gun dealing agencies to point to in talking about a black market in guns. Third, the idea that there would be a black market in guns is consistent with somewhat romantic notions about the organization of the criminal underworld. We expect criminal offenders to have special arrangements for getting guns, and we imagine that the special arrangements involve profit maximizing underworld firms willing to risk arrest for a price.⁴⁰ Consequently, behind data indicating that guns used in crimes in tight control states tend to come from loose control states, we imagine interstate "gun runners" rather than simply a broad pattern of rural to urban migration that carries guns along in its wake.⁴¹

While these observations do sustain expectations that black markets in guns would exist as a source of guns to criminal offenders, and while it is almost certainly true that some specialized arrangements exist for supplying offenders, it is not at all clear that the black market in guns will be composed of large, durable interstate operations, nor that the black market will supply the majority of guns obtained by criminal offenders. The major point that undercuts these common expectations is the observation that there are so many other ways for criminal offenders to acquire guns that there may be little room in which a black market in guns could develop. In other words, the competition from licensed dealers, private transferors, and thefts may be so great that it would be hard for a dealer who wanted to specialize in dealing with criminal offenders to do so.

This point is made all the stronger by noting two additional facts. First, since few illegal dealers will produce guns, they will have to supply themselves from existing sources of guns. That means licensed dealers, private transferrers, or thefts. They are restricted to the same sources as everyone else, but must obtain the guns and resell them at a higher price to make money from the deal. At the same time, the price they charge cannot be too high lest they lose their customers to other sources. Second, unlike drugs, the illegal gun market is likely to be filled with customers who buy only a small number of guns. Without frequent, repeat customers, a gun

dealer faces a choice between remaining at a small scale (thereby restricting the number of people with whom he must deal and reducing the risk of arrest), or operating on a large scale with a large number of customers (thereby exposing himself to a heightened risk of arrest).⁴² Moreover, given that there is an upper limit on the price the illegal dealer may charge (determined by the willingness of criminal offenders to supply themselves from the same sources to which the illegal dealers must go), the mark-up on any given gun is likely to be small.⁴³ This necessarily implies that illegal gun dealing is a tough business: it is likely to both marginally profitable and risky. This does not mean that special firms supplying criminal offenders with guns won't exist, but it does mean that the firms that do exist are unlikely to be exclusively in the illegal gun business. They are most likely to be licensed dealers or private transferrers who occasionally deal with proscribed persons, or burglars or fences that occasionally have stolen guns to sell. As such they will look more like the other sources of supply than a whole different sector of gun distribution.

In sum, it is useful to think of the gun distribution system as composed of four fairly distinct sectors: licensed dealers who wittingly or unwittingly sell to proscribed persons; private gun owners who sell, lend, or give their guns to proscribed persons; thefts of guns from private owners, licensed dealers, importers, or manufacturers that end up directly or indirectly in the hands of

proscribed persons; and black market firms explicitly and more or less exclusively engaged in supplying criminal offenders with guns.⁴⁴ While this conception helps to structure strategic thinking about enforcement strategies designed to keep guns out of the hands of criminal offenders, we would be further aided by quantitative estimates of the relative importance of these different sectors as sources of supply to criminal offenders. Unfortunately, current evidence is insufficient for confident and precise quantitative estimates even of the total volume of transfers moving through the varied supply sectors, let alone the portion of those transfers that involve proscribed persons. Still, lacking confident and precise knowledge is not quite the same as being wholly ignorant. And it is possible to narrow our range of uncertainty about the relative importance of the different sectors by looking at evidence and making calculations in three different areas; estimates of the total size of the various sectors and their vulnerability to proscribed customers; a small amount of direct evidence on the paths guns follow to reach criminal offenders; and statements from criminal offenders about how they armed themselves. Taken together, these observations can strengthen our quantitative intuitions about which sectors are currently most important in supply offenders, and which would, therefore, as a first order approximation, be the most attractive target for enforcement activity.

One further note about the degree of uncertainty in these

estimates is worth making. Uncertainty about the relative importance of the different supply sectors counsels a diversified attack: because we cannot be sure we are focused on the most important sector, we should probably plan enforcement operations directed at all the sectors and argue about the allocation of resources among the various approaches rather than decide on any single approach. This conclusion parallels the conclusion one would reach even if we had certain knowledge about which sectors were currently the most important. The reason is that the supply system is dynamic -- it adjusts to enforcement and regulatory action. Consequently, the sector that is most important today, and becomes the target of stepped up enforcement activity tomorrow, will have ceased being the most important sector by the next day. Which of the other sectors will have emerged as the most important is uncertain. In short, both uncertainty and the dynamic responses of the system push to the same conclusion: plan a diversified strategy rather than a narrow program. And this conclusion, in turn, means that we do not need a great deal of precision in our estimates to design a useful strategy. The analytic characterization of the possible sources of supply combined with some very rough estimates of their relative size and importance are probably sufficient.

2. Quantitative Estimates of the Supply Sectors

In all likelihood, the licensed sector accounts for the largest number of gun transfers in any given year. Virtually all newly

produced and imported guns pass through this sector. This amounts to some 1.5 to 2.0 million handguns a year. In addition, some portion of the existing stock of handguns that are transferred to new owners also move through this sector. One reason is that some unlicensed owners may use licensed dealers as intermediaries in selling their unwanted weapons. But another reason is that many private owners who have guns to sell often have licenses to sell. Indeed, it has been estimated that as many as two-thirds of federal licensees fit the image of private collectors more closely than the image of retail gun dealers. So perhaps it is reasonable to guess that some 1.5 to 2.5 million handguns move through the licensed sector in any given year.

An important question is how many of these transfers involve criminal offenders or proscribed persons. If compliance with existing laws were perfect, the answer would be none. But there is little reason to believe that compliance is perfect. Indeed, we have already identified several mechanisms through which the licensed sector could be penetrated. We also know that regulatory surveillance of licensed dealers is very weak: data from the Bureau of Alcohol, Tobacco, and Firearms (hereafter, ATF) indicates that the probability that any given federal licensee will be investigated in any given year is less than 10%.⁴⁵ The likelihood that a violation will be detected and prosecution follow is much lower.⁴⁶ So, there is little incentive apart from the licensee's own motivations and exaggerated worries to motivate compliance with the law.

But these general observations do not answer the quantitative question of how many of these transfers involve proscribed persons. A rough estimate of this number can be based on data collected by ATF in the course of a detailed review of 70,000 transfers made by licensed dealers in Washington, Boston, and Chicago in 1977. The observed rate of illegal sales and questionable purchases varied from 0.6% (in Washington, D.C.) to 4.0% (in Chicago).⁴⁷ If we apply these fractions to our estimates of 1.5 to 2.5 million transfers occurring in this sector, we calculate that some 9,000 to 100,000 transfers to proscribed persons occur in this sector each year.

Much greater uncertainty surrounds estimates of the private transfer sector, but three different estimating procedures may establish the range. One method depends on an analysis of data from states that require private transferrers to report transfers of handguns. In principle, if compliance with the requirements were perfect, these reports would provide an accurate direct estimate of the volume of private transfers. In practice, it seems reasonable to guess that only a fraction of those who transfer their weapons would take the trouble to notify the central registry. If this guess is correct, then any estimate based on these data would be an underestimate of the true number of transactions. Thus, in Chicago from 1968 to 1977, 623,000 handguns were registered.⁴⁸ Of this number, about 60,000 were reported transferred to new owners.⁴⁹ This implies that, in any given year, about 1.0 percent of the guns in

private hands were transferred, or about 300,000 to 400,000 guns.

A second method is based on survey data on the sources of guns to current owners. In 1968, 34 percent of gun owners indicated that they acquired their guns from private transfers rather than from retail purchases.^N If we assumed this proportion were constant over time, then it would be possible to calculate the number of private transfers simply by multiplying estimates of the number of retail transactions by 0.34. The reason is that in order for that proportion to remain constant, every time a private transfer occurred, about three retail transactions would also have to occur. Otherwise, the fraction of people reporting that their source was a private transfer would also have to change. The implication, then, is that some 500,000 to 850,000 handguns change hands through private transactions in any given year.

A third method used by Philip Cook relies on data collected in a 1976 Field poll in California.⁵⁰ This survey found that about 12% of the handgun owners in California had acquired a handgun in the last year. If we generalized this statistic, and assumed a stock of 30-40 million handguns, then we could calculate that 3.6 to 4.8 million handguns changed hands in any given year. If all the new gun transactions occurred through licensed dealers, and if a quarter of the transactions involving used guns went through dealers, then we could calculate that about 1.0 to 1.5 million handguns moved through the private transfer sector.

Thus, the private transfer sector involving somewhere between 300,000 and 1,500,000 guns -- a significant quantity, but still smaller than the volume moving through the licensed sector. How many of these handguns end up in the hands of proscribed or criminally motivated people is even more uncertain. In principle, of course, this sector is extremely vulnerable to proscribed persons, since the private transferors are under no federal obligation to avoid transfers to proscribed individuals. Moreover, there is virtually no regular scrutiny of this activity, and it is hard to imagine how such small-scale, intimate events could be brought under public scrutiny. In practice, however, the vulnerability of this sector may be determined by the "social proximity" of legitimate current owners to proscribed individuals. If people in the "underworld" have few friends or relatives in the "straight world" who own guns, it may be hard for chains of "private transfers" to develop that start in legally entitled sectors and end up in proscribed sectors. The social distance may simply be too great. On balance, then, it is unclear whether the private transfer sector is more or less vulnerable to proscribed persons than the federally licensed sector: once approached, private transferors may yield to proscribed persons more easily than licensed dealers, but it requires more personal connections and initiative to make the approach.

The third transfer mechanism is thefts. For analytic purposes, it is useful to distinguish between thefts from manufacturers,

shippers, licensed dealers, and individuals. Data gathered by ATF on thefts from manufacturers and shippers are sufficient to indicate that thefts from these sources are a relatively insignificant part of the problem.⁵¹ The greater problems lie with licensed dealers and private owners. Two different surveys of licensed dealers have been undertaken by ATF to determine the number of handguns stolen. A 1975 survey of 30,000 licensed dealers in the Midwest revealed that handguns were stolen from these dealers at an annual rate of about 1 handgun for every 10 dealers.⁵² A more recent survey of a sample of 328 licensed dealers drawn from all licensees indicated an annual rate of handgun thefts of approximately 1 handgun for every 25 dealers. If these rates are applied to the population of 170,000 federal licensees, one can calculate that approximately 7000 to 17,0000 handguns are stolen from federal licensees each year.

Estimates of the number of handguns stolen from private individuals can be generated by two different methods. First, for those cities or states with comprehensive gun registration systems, we can ask what fraction of the guns are reported stolen each year. This is an imperfect method, since we do not really expect the registration system to be comprehensive, nor do we expect perfect reporting on the theft of weapons. Still, on the basis of data from New York City, Brill estimates a reported theft rate of 253 per 100,000 handguns.⁵⁴ If we assumed that New York City's experience were typical of the rest of the United State, we could calculate that some 100,000 to 115,000

handguns were stolen from private individuals each year.

Second, we can investigate the burglary reports from selected cities and determine the fraction of household burglaries that yielded a stolen handgun. Table 2 presents available data from several cities. The differences in the fraction of burglaries resulting in a loss of a handgun may reflect many factors, and knowledge of these factors may be very important in estimating a true national estimate of the yield of handguns in burglaries. For our purposes, however, it is sufficient to guess that the national yield lies between 3 percent and 10 percent. Applying this rate to annual numbers of household burglaries produces an estimate of approximately 60,000 to 200,000 handguns stolen each year.

Thus it seems reasonable to assume that some 65,000 to 225,000 handguns are stolen each year. The vast majority of them -- 60,000 to 200,000 -- come from household burglaries. This is an impressive number -- even when compared with the volume of other more common transfers.

What makes this number even more impressive, however, is a strong presumption that virtually all stolen guns end up in the hands of proscribed or dangerous people. This is true partly because the immediate possessor of a stolen gun is, by definition, a thief. But it is also true that stolen guns are particularly attractive to people who intend to commit violent crimes with guns because they are virtually impossible to trace. Thus whether the thief keeps it for

TABLE 2

Fractions of Residential Burglaries Yielding a Handgun:
Selected Cities and Years

Cities and Years	Number of Residential Burglaries	Number of Guns Stolen in Residential Burglaries	Percentage of Burglaries Involving Theft of a Handgun
Houston, 1976	6,339	901	14.2
St. Louis, 1975	13,547	1,047	7.7
St. Louis, 1976	12,410	840	6.8
Durham, N. C.	534	37	6.9
Atlanta, 1977	12,446	699*	5.6*
Los Angeles, 1977	63,928	1,422*	2.2*

SOURCES: Correspondence, Houston Police Department; supplementary data from the St. Louis Metropolitan Police Department; Philip J. Cook, "Crime in Durham" (Duke University); data collected from the files of the Atlanta Police Department; and supplementary data provided by the Los Angeles Police Department.

*Involves all firearms, not just handguns.

himself or transfers it to a fence, colleague, or black-market dealer for future sales, the gun has crossed more or less irrevocably into the proscribed sector.

So far, we have examined ways in which proscribed persons might arm themselves directly by penetrating the legitimate sector without the aid of intermediaries. It is possible, however, that some specialized institutions might develop to channel guns from legitimate to proscribed sectors. In fact, it is precisely this notion that justifies sophisticated federal criminal investigations of gun dealers. If such firms existed, it would be important to know something about the volume of transfers that flowed through them.

The fact of the matter is, however, that we know relatively little about this sector. It may be that we are ignorant because it is hard to observe illegal activity directly. But it could also be true that this sector does not exist -- or at least not in the form we imagine. As our analyses above indicated, some portion of the specialized criminal demand that could stimulate the black market can, in fact, be satisfied through the less specialized institutions already examined. If enough of that specialized demand is satisfied through the less specialized institutions, the black-market firms may not arise at all.

Moreover, as one thinks about how the illegal market might be structured, it becomes apparent that the particular characteristics of black-market firms will be decisively influenced by the

characteristics of the competing supply mechanisms. This is obvious in the case where these other supply mechanisms substitute for the black-market firms. But it is also clear that these other supply mechanisms will directly shape the activities of the relatively specialized institutions that do come into existence.

Since the black-market firms will themselves be supplied by these other mechanisms, the particular way in which these other mechanisms "leak" guns to black-market firms will have an important effect on the size and longevity of black-market firms. If a shipment of 50 to 100 guns is stolen, for example, then the disposal of these guns may require the development -- or short-term use -- of a relatively large and durable institution. It must be capable of managing 50 to 100 illegal transactions, each with a new customer. On the other hand, if a few guns are stolen in a series of household burglaries or are purchased under the counter from licensed dealers, they may be disposed of through relatively small and impermanent operations or through a larger institution that has wide underworld contacts, but does not exist solely to supply guns -- for example, fencing operations. In short, the smaller and more unpredictable the "leaks" of guns from the other sectors, the less likely will be the development of large, durable institutions dealing specifically in handguns for proscribed individuals.

Given these difficulties, it is necessary to change our approach in analyzing the black-market firm. Instead of defining it as a

distinct sector and estimating its size, we shift to a more qualitative approach. We seek to answer the following question: if a person advertises himself as a criminal who needs a handgun, who responds to his demand? It could turn out to be the black-market firms we imagine. Or it could turn out to be something that resembles the other sectors we have identified. The great virtue of posing the question in this form is that review of investigative files created by ATF undercover agents will produce the empirical evidence we need to answer it. After all, the agents pose as criminals who want to buy guns and then accumulate and record information about the people who agree to do business with them. Thus these investigative files provide a rich source of intelligence about the nature of the institutions and operations in the black market for handguns.

We have exploited this data base by examining closed investigative files for virtually all the cases that led to a charge of dealing without license" made by ATF from 1974-76 in seven regional offices, including the cities of Atlanta, Boston, Chicago, Dallas, Los Angeles, San Francisco, St. Louis, and Washington, D.C. In reviewing these files, we sought information about the following: 1) the estimated scale of the operation and 2) sources of supply to the illegal firm. In gauging the scale of the firm, we generally could look at two relatively hard pieces of data: 1) reported transactions during the period of the investigation and 2) the size of the inventories seized at arrest. In identifying sources of supply, we

usually had to rely on statements made by the dealer to the undercover agents. In some cases, however, relatively complete histories of the guns sold to the agents or seized at the end of the investigation were available. In still other cases, the statements by the illegal dealer could be corroborated by a burglary report indicating a recent theft of a gun or by a formal record indicating that the gun had been sold to the illegal dealer by a federally licensed dealer.

Now, there are many reasons to be very wary of these data. After all, one can hardly assume that ATF undercover agents encounter a random sample of all illegal dealers. In fact, one would expect the opposite. So it is hard to generalize from this sample to all illegal dealers. Beyond this structural problem are other equally damaging problems. It is not clear that the agents see all of a firm's operation, nor that the agents will record everything they see in a reliable way, nor that everything they record gets into the case file. Still, the usual justifications for using bad data as an interim measure applies here with the usual force: it is the only information available, and we need to make some guess about the nature of this wholly illegal sector.

Table 3 presents the data on the scale of the sample of "illegal firms" encountered by ATF agents. What is striking is how small the firms are. The majority of the "firms" had no inventories seized at arrest. Only a tiny fraction -- 10 percent -- have more than 20 guns on hand when the arrest is made. Similarly, the firms seem to make

TABLE 3
THE SCALE OF BLACK-MARKET FIRMS ENCOUNTERED BY ATF UNDERCOVER INVESTIGATIONS

CITIES, YEARS, AND NUMBER	RATE OF OBSERVED TRANSACTIONS						INVENTORIES SEIZED AT ARREST				
	1 PER MONTH	1 < .2 PER MONTH	2 > .5 PER MONTH	≥5 PER MONTH	UNKNOWN	0	1 TO 5 GUNS	6 TO 20 GUNS	>20 GUNS	UNKNOWN	
Boston, Massachusetts, 1973-75 N = 28	4	5	9	4	6	12	7	6	2	1	
Connecticut, 1973-75 N = 7	1	—	5	1	—	6	1	—	—	—	
Dallas/northern Texas, 1974-76 N = 12	—	—	6	1	5	6	2	—	2	2	
Chicago/northern Illinois, 1974-76 N = 4	2	4	3	4	5	13	2	1	2	—	
Southern Illinois, 1974-76 N = 17	1	6	4	5	1	15	—	—	2	—	
San Francisco/northern California, 1975-77 N = 4	1	1	—	—	2	2	1	—	1	—	
Los Angeles/southern California, 1975-77 N = 7	2	1	2	2	—	1	2	3	1	—	
Allanta, Georgia, 1974-76 N = 12	—	1	5	4	2	5	3	2	2	—	
St. Louis, Missouri, 1975-77 N = 17	—	5	8	2	2	10	1	2	3	1	
Washington, D.C., 1974-76 N = 23	4	4	13	1	1	17	3	3	—	—	
Total	15	27	55	24	24	87	22	17	15	4	
Percentage of total	10	19	38	16	16	60	15	12	10	3	
Percentage of "Known"	12	22	45	20	—	—	—	—	—	—	

NOTE: N = number.

relatively few transactions over the course of a year. The majority sell at an observed rate of less than five guns per month. Even if we assume that the observed transactions represent only a small fraction of the total transactions, which is unlikely given the small inventories, one can calculate that the vast majority of the firms sell fewer than 600 guns per year.

Table 4 presents data on the sources of weapons to illegal firms. As one would expect from the analyses of other sectors, we find that the black-market firms are supplied by both thefts and legitimate purchases. In fact, the legitimate purchases loom surprisingly large as a source of supply to the illegal firms. Fully 45 percent of the firms whose sources are known were supplied by purchases from licensed dealers. This suggests that private transferors do often show up in this wholly illegal market and that they occasionally do collude with people who have openly illegal intentions.

The other striking fact in this table is the rather heavy reliance on thefts from private residences. Among firms supplied by thefts from known sources, 54 percent were supplied at least partly by thefts from private residences. This suggests that at least some of the enormous volume of guns stolen from private residences each year are transferred again, either by the thieves themselves or through a specialized institution. In fact, it seemed clear that many "gun firms" encountered by ATF agents were, in fact, generalized "fencing" operations. The "dealers" often sold appliances, jewelry, and so

TABLE 4
SOURCES OF GUNS TO BLACK-MARKET FIRMS ENCOUNTERED BY ATF UNDERCOVER AGENTS

CITIES, YEARS, AND NUMBERS	THEFTS						BOTH LEGITIMATE PURCHASES AND THEFTS		UNKNOWN
	FROM ALL SOURCES	FROM WHOLESALE UNITS	FROM RETAIL UNITS	FROM RESIDENCES	UNKNOWN	LEGITIMATE PURCHASES			
Boston, Massachusetts, 1973-75 N = 28	18	2	3	7	7	10	2	2	
Connecticut, 1973-75 N = 7	4	2	1	1	0	2	0	1	
Dallas/northern Texas, 1974-76 N = 7	8	0	2	7	1	2	1	3	
Chicago/northern Illinois, 1974-76 N = 12	10	4	2	5	0	6	2	4	
Southern Illinois, 1974-76 N = 4	11	0	6	6	2	4	4	6	
San Francisco, northern California, 1975-77 N = 17	2	0	1	1	0	2	1	1	
Los Angeles, southern California, 1975-77 N = 4	3	1	1	2	0	4	1	1	
Atlanta, Georgia, 1974-77 N = 7	2	0	1	1	0	6	0	4	
St. Louis, Missouri, 1975-77 N = 12	10	0	4	1	5	6	2	3	
Washington, D.C., 1974-76 N = 17	10	0	2	7	2	10	2	5	
Washington, D.C., 1974-76 N = 23	78	9	23	38	17	52	15	30	
Total	54	—	—	—	—	36	10	21	
Percentage of total firms with source**	68	—	—	—	—	45	—	—	
Percentage of "known" firms with source	—	13	33	54	—	—	—	—	

NOTE: N = number.
 These firms were also recorded in thefts and legitimate purchase columns.
 ** Totals to more than 100 percent because of multiple sources of supply for given firm

forth that were openly admitted as stolen, in addition to guns. Approximately 19 of the 115 firms with known sources of supply appeared to be fencing operations. Thus fencing operations seemed to account for about 10 percent of all the firms encountered and about 25 percent of all firms that were supplied at least partly by thefts.

The general picture of the black market suggested by these data, then, is one of fairly small firms. None appear to be exclusively in the business of selling guns to proscribed persons simply because there does not seem to be enough money in this business. They appear to be a mixture of 1) private transferors who occasionally sell guns to people who announce their illegal intentions, 2) thieves who happen to pick up guns in burglaries and are willing to sell them directly to other criminals, and 3) some people who operate as middlemen between gun owners and gun-stealing thieves on one hand and people who want to buy guns for openly illegal purposes on the other. Given the porousness of the "legitimate" sectors of the distribution system, this is roughly the result one would expect.

3. Current Paths to Offenders

These rough estimates of the supply potential of different sectors provide some basis for gauging their relative importance -- both now and in the future as different control measures are tried. To give some focus to current control efforts, however, it is desirable to develop some exact information about how guns currently reach criminal offenders. Fortunately, a small amount of

data is available to explore this issue. For a while, the Boston Regional Office of ATF conducted "forward traces" of handguns involved in criminal offenses in Boston. These investigations began with a gun seized in a crime, continued with a routine trace that revealed when and where the gun was last sold at retail and to whom, and then followed the path of the gun to the offender through interviews with private owners. The interviews, conducted by ATF agents, continued along the chain of private owners until the offender was reached, the gun was stolen, or the next owner could not be located.

Obviously, these data are flawed. The sample is small. Boston may be different from many other cities. It is biased toward paths that can be conveniently investigated. And the validity of statements by gun owners being questioned by federal agents about guns used in crimes must be considered questionable. Still, since this is the only empirical information of this type now available, it commands attention.

Table 5 presents the data in a way that allows us to see how guns reach criminal offenders in Boston. Three observations drawn from this table seem particularly important.

First, guns reach criminal offenders through many paths. The problem of containing handguns is not simply a problem of thefts, or retail sales, or private transfers. It is all of these things to varying degrees depending on the offense.

Second, private transfers do not emerge as a major sector

TABLE 5

Paths of Guns to Offenders

	Original Retail Purchase		Unbroken Chains of Private Transfer	Stolen At Some Stage	Other or Unknown	Total
	Entitled Purchaser	Proscribed Purchaser				
Homicide and rape (in per- centage)	28 N = 2	0 N = 0	0 N = 0	72 N = 5	0 N = 0	100 N = 7
Assault (in per- centage)	52 N = 21	2 N = 1	20 N = 8	13 N = 5	13 N = 5	100 N = 40
Armed robbery (in percentage)	8 N = 2	0 N = 0	17 N = 4	62 N = 15	13 N = 3	100 N = 24
Other, for ex- ample, drugs, burglary, gambling, drink, and weapons offenses (in percentage)	14 N = 6	2 N = 1	26 N = 11	50 N = 21	7 N = 3	100 N = 42

SOURCE: Closed ATF Investigative Case Files, Boston, MA, 1975-76.

Note: N = number.

supplying guns to offenders. Licensed dealers and thefts are more important. To a degree this is reassuring. A world in which guns migrated to proscribed people through long chains of private transfers shading almost imperceptibly into illegal transfers presents the most difficult control problem. Although we cannot be confident that this sector will not become important in the future, it is cheering to see that it need not be our highest priority now.

Third, a striking difference appears between the sources of guns used in armed robbery and those used in assaults. Slightly more than half of the assault guns reach the attackers from licensed dealers in legitimate transactions. The guns involved in armed robbery, however, reach the robbers through different routes with the predominant mechanism being theft. A nice intuitive explanation for this difference can be constructed. We know -- largely from studies of homicides -- that assaults are relatively likely to involve ordinary, noncriminal populations. We also know that armed robbers are much more likely to be criminal recidivists. If the existing regulations were successful in discouraging people with criminal records from acquiring guns through the licensed sector, and if these people could not easily find people to transfer a weapon to them privately, one would expect the pattern we in fact find: armed robbers -- who are more often expressly and determinedly criminal -- equip themselves largely through illegal markets.

These data, then, lend additional support to the general

implications of the analysis of the supply potential of the various sectors. Since all the sectors are important both now and in the future, we should organize a broadly diversified attack on the supply system. To the extent that we want to control street crime and keep guns from criminal recidivists, however, we should probably give greatest emphasis to controlling thefts.

MORE TO COME

C. Investigative Tactics Against Sources of Supply

The leaks in the supply system described above are the inevitable targets of enforcement operations designed to keep guns out of the hands of criminal offenders. What form such operations might take, and which organizations might be available to carry them out, is our next question. One of the most important implications of our analysis of the supply system is that, in all likelihood, the licensed distribution system plays a major role in supplying guns to criminal offenders. This means that our enforcement strategy must include regulatory as well as criminal enforcement activities. Moreover, our analysis indicated that while interstate movement of guns would be part of the problem, it also seemed likely that the larger portion of the problem would be local -- both at the start of an investigation, and at the end. Consequently, the enforcement strategy would have to include local as well as federal efforts -- even when the target was

sources of supply rather than illegal possession and use. These observations provide a useful framework in which to consider enforcement operations. We will first consider regulatory enforcement designed to keep licensed dealers from selling to proscribed customers, and then consider the much more difficult question of criminal enforcement directed at private transferors, thefts, and black market distributors.

1. Regulatory Enforcement

The target of regulatory enforcement is licensed dealers. The aim is to discourage the dealers from selling to proscribed customers. In its basic form, it resembles many other enforcement operations such as border control, tax enforcement, alcoholic beverage control, and so on. Presumably regulatory enforcement reduces illegal transactions through three principal mechanisms: the promotion of voluntary compliance, deterrence of badly motivated non-compliance through the threat of punishment, and the incapacitation of dealers who seem willing to make illegal transfers. The size of these effects depends, in turn, on the reach of the enforcement operation (which determines the likelihood that an offending dealer will be contacted), and the nature and magnitudes of the sanctions meted out.

The basic questions in the design of a regulatory enforcement strategy are: 1) the targeting of the regulatory patrol force (i.e., how to divide the time and attention of a regulatory patrol force among the universe of licensees); 2) the style of the regulatory

enforcement effort (i.e., whether it will be primarily a civil regulatory effort designed to promote voluntary compliance among a presumably well motivated group of licensed dealers, or whether it will be a tough criminally oriented program designed to deter and incapacitate determinedly criminal dealers); 3) the implicit standard of care imposed on dealers by the regulatory enforcement effort; and 4) whether regulatory enforcement should be primarily a federal or local responsibility. Each of these issues will be considered in turn.

a. Targeting Regulatory Enforcement

In thinking about the allocation of regulatory enforcement capacity across all gun licensees, several broad options can be distinguished. One is whether the operation should be primarily reactive (waiting for someone to notify the enforcement agency that a violation or crime has been committed), or primarily proactive (actively searching out violations and offenses even in areas that have not been explicitly identified by complaining citizens). Within each of these broad strategies, many variants are possible. A predominantly reactive strategy, for example, could make more or less determined efforts to mobilize the community to watch for and report violations. At one extreme would be a strategy that included: 1) widespread publicity about the responsibilities of gun dealers under the law and the crucial importance of negligent dealers in supporting criminal activity; 2) establish a 24 hour "hot-line" to

receive complaints, and 3) offer substantial rewards for information leading to the successful prosecution of licensed gun dealers for gun law violations. At the other extreme is a strategy which was silent on the requirements of the law and the importance of enforcing them, which made no special provisions to receive complaints, and which offered only hassles to those who came forward with information.

Within the proactive strategies the crucial issues are exactly how one targets the surveillance efforts of the regulatory enforcement force. One possibility is simply to distribute the patrol force evenly over the universe of licensees. A second possibility is to have different levels of surveillance/investigation, and assign the different levels randomly to licensees. A third possibility is to distinguish initial application for a license from renewals or continuing operations under the license and seek comprehensive coverage with respect to initial applications, and less comprehensive but more intensive coverage in the areas of renewal or continuing operation -- this on the implicit theory that more can be discovered about the likely operating characteristics of licensees at the application stage.⁵¹ A fourth possibility is to assign different levels of surveillance and investigation to dealers who fit "profiles" that indicate they are unusually prone (or unusually resistant) to illicit transactions. A fifth possibility is to have different levels of surveillance and scrutiny, and to assign licensees to the various categories on the basis of information and responses developed at

lower levels of investigation and scrutiny. Thus, if a relatively superficial regulatory investigation suggested weaknesses in record-keeping, that finding would trigger a higher level investigation much as Customs now refers people crossing the border to secondary inspection if the primary inspection picks up some characteristics that indicate an increased likelihood that the person may be committing offenses.⁵²

In considering these various possibilities, one is intuitively drawn away from the random strategies and towards the strategies that give a greater focus on the enforcement effort. Such moves seem to be in the interest of fairness, minimal intrusiveness, and effectiveness because they promise to focus investigative attention on places where problems are likely to be found. But reflection suggests that there may be great value associated with the relatively random strategies as a complement to the more narrowly focused strategies. And further that the crucial question in determining the appropriateness and practical value of the focused strategies is the character and quality of the information used to focus the enforcement activities. These issues are sufficiently important to deserve a somewhat detailed discussion.

Randomness in the search for civil and criminal violations among licensed dealers has two obvious liabilities. One is that the strategy seems wasteful compared with even slightly more focused efforts. Why should an agency spend time searching for violations in

areas where there is no particular reason to find them rather than in areas where there is some reason (however weak) to do so? A second is that the object of the investigation might reasonably be indignant about being subjected to an investigation for no better reason than that his number happened to come up. Both efficiency and an interest in minimal intrusiveness, then, seem to counsel more focused strategies.

The argument in favor of randomness as part of a strategy for regulatory enforcement depends on three observations.⁵³ First, randomness in an enforcement approach maximizes the unpredictability and hence the deterrent power of any enforcement approach. The surprise associated with randomness is particularly valuable if the targets of the investigation area assumed to be sophisticated because randomness neutralizes the offenders' capacities to learn the methods of the enforcement agency and adjust their operations to take advantage of their knowledge.⁵⁴

Even if the targets are not sophisticated enough to learn and adapt to the targeting strategy of the agency, there is a second reason to be interested in randomness. That is that the random strategy will provide the best basis for developing the profiles that could be used for more focused strategies. If an enforcement agency is operating with a strategy of targeted enforcement so that it gives close attention to some of its licensed dealers and not others, then it will keep discovering that the dealers it targets are the ones that

produce most of the violations. The reason, of course, is that the agency is looking harder for violations in the places indicated by its strategy. The success of the strategy becomes a self-fulfilling prophecy. The only way for the agency to find out if it is, in fact, looking in the areas that are most likely to yield violations is occasionally to look as hard in places that are not now being closely scrutinized to see if there are even more violations in these neglected areas. A systematic way of searching neglected areas to determine if they would be more profitable places to search for violations is to use a piece of the regulatory enforcement capability in random but intensive searches for violations. Indeed, if the regulatory agency were being perfectly systematic about its enforcement strategies, it would use only the results of the random component of its investigations to establish the profile that guided the targeted piece of its activities because it is only the random piece that contains unbiased information about which sorts of dealers are most likely to commit violations.

The third argument in favor of randomness is a partial rebuttal to the subject's indignation about being singled out for attention. If the targetting on licensees is truly random, then the enforcement agency can at least assure the subject of the investigation that no bad motives were involved in selecting him for investigation; it was simply the luck of the draw. This point may offer cold comfort to the subject of a random investigation, but it may prove to be compelling

in the courts, for they seem to be slightly more interested in guaranteeing that no bad motivations enter into discretionary enforcement decisions than in assuring that clearly good reasons exist.⁵⁵ So, there is a great deal to be said for using at least part of the regulatory enforcement capacity in investigations that are randomly targetted.

The argument for targeted strategies of investigation that allocate regulatory enforcement efforts according to some notion of which sorts of dealers are most likely to commit violations depends almost entirely on how accurate the notion guiding the activity turns out to be. If the profile of the violation prone dealer is accurate, overall enforcement effectiveness will be increased. If the profile lacks a substantial basis in fact, the enforcement effort will be not only ineffective, but in a very important sense biased. Thus, if an agency is relying on a profile it is very important to determine if the profile really does reliably distinguish violation prone dealers from safer dealers, or is, instead, the product of some intuitive prejudices. It is particularly troubling in this regard that the profiles currently guiding federal regulatory efforts lack the necessary evidentiary basis. Currently, federal regulatory efforts give higher priority to inspecting new license applications than old licensees, and among licensees, higher priority to pawnshops than to other sorts of dealers.⁵⁶ Yet to my knowledge, there is no study indicating that this strategy of targetting very scarce federal

resources is one that is well designed to deter or discover dealer violations. Indeed, it is hard even to construct the intuitive argument one would rely on in defending this allocation without evidence. In short, there is no virtue in having a targeted strategy of regulatory inspections if the targeting lacks a coherent rationale and an evidentiary basis. One might be better off with a strictly random process.

The ideal strategy, of course, is one that combines all three approaches: one component that responds to complains, another that is proactively targeted by a profile that reliably distinguishes the violation prone dealers from others, and a third component that is genuinely random to protect the overall deterrence of the enforcement regime and to provide the proper basis for the construction of the profiles. Exactly how much of the effort to allocate to each of these components would depend on a great many factors such as the total size of the effort, whether complaints could usefully be screened for reliability and seriousness of the offense alleged, how discriminating the profiles of violation prone dealers turned out to be, and so on. But one interesting general point is that if the operation is very small, it is probably best to allocate most of its efforts to random activities both to maximize deterrence, and to provide a large enough sample of random investigations to insure that any profile that is constructed to guide other investigative efforts will be reliable.

b. The Style of Regulatory Enforcement

A second major issue in the design of regulatory enforcement strategies concerns its basic operating style. The range of possibilities is again very broad. At one extreme is an approach that assumes the good intentions and civic responsibility of dealers, attributes all violations of laws however serious their consequences to ignorance or negligence on the part of the dealers, and relies on gentle reminders of obligations to unleash the potential of voluntary compliance. At the other extreme is an approach that assumes that at least a few and perhaps the majority of dealers are potential criminals who hide a clear willingness -- even eagerness -- to supply criminal offenders with weapons behind claims of innocence; that relies heavily on covert methods of criminal investigation to develop information on criminal activities and intentions; and that contemplates formal civil or criminal proceedings against suspect dealers resulting in harsh punishments. Somewhere in the middle of this range is an approach that is skeptical but not entirely cynical about the motivations of licensed dealers; that relies primarily on formal audits between regulatory agents and licensees in which the mood ranges from austere to stern, and in which the major evidence being considered are the records created and kept by the licensed dealer in response to legal requirements; and from which the most serious contemplated result would be a formal civil action of some kind. The problem is similar to the one the IRS faces in dividing its activities among audits in which there is no presumption that the tax-

payer has cheated, stricter audits where there is a suspicion that the person might have cheated but not seriously, and criminal investigations stimulated by a reasonable suspicion that the person has knowingly violated the tax laws.⁵⁷

In thinking about which style to use a strategist is torn between the economy and resultant scale of the approaches designed to promote voluntary compliance on the one hand, and the worry that these approaches are too easily defeated by determinedly criminal dealers who shield their criminal intent behind their license and render the voluntary compliance approach meaningless on the other. It is worth noting that the appeal of the lighter approaches to promoting compliance comes not only because such approaches are economical in the use of time and money (the audits are relatively quick and require little in the way of advance preparation), but also because the resource they conserve may be even more scarce and precious than time and money: namely, the tolerance of the population. Because no presumption of guilt is made, and because no expectation of criminal proceedings exists, little anxiety or resistance is created among those subjected to this style of investigation. On the other hand, if the subject is, in fact, criminally motivated, the superficiality and good humor of the compliance investigation will seem laughable and breed disrespect rather than enthusiasm for the regulatory regime. So, there is a clear trade-off between the virtues of a style that is consistent with a broad but light reminder of responsibilities under

gun control regulations, and a narrower but more forceful approach that focuses money and authority on a few who are assumed to be criminally motivated.

Since the choice of enforcement style seems to depend so critically on the assumed motivations of dealers, it might seem desirable to make the choice on a case by case basis -- using light approaches with dealers assumed to be innocent and heavier approaches with those who might be more reckless or even criminal in their intentions. Indeed, it clearly is desirable to tailor the approach to individual cases when that is possible. But two observations remind us that case by case decisions may not always be possible, and that it might be necessary to establish a general policy regarding style as well as make case by case decisions.

The first is that the enforcement agency does not always have good information about the dealers who are the subjects of their investigations. Unless the dealer has previously been investigated, the agency will know only what can be gleaned from the complaint or profile that established the predicate for the investigation. In the case of randomly chosen or routine investigations, not even this information will be available. For the vast bulk of investigations, then, the regulatory agents will be operating without good, specific information about the dealer to be investigated. Yet, the agents will have to adopt a particular style in conducting the investigation.

The second observation is that it is difficult for an

organization to maintain in its repertoire of operating procedures the wide variety of styles included in these different conceptions of enforcement. Gradually, any organization develops a broad sense of its mission and operating style, and then clings to that as an expression of its position in the world. It would thus be hard to retain in an organization both the notion that the people it regulated were largely well intentioned and deserved to be treated with great respect, and the idea that many licensees were crooks whose crimes were almost indistinguishable from the robbers and murderers who actually used the guns in crimes.⁵⁸

To a degree one can accommodate this variety by setting up different parts of the organization guided by the quite different expectations about their environment. And this has been done at the federal level by distinguishing between criminal and regulatory enforcement not only at the structural level of the organization, but also at the level of individual job descriptions that are translated into different duties, skills, pay and benefits.⁵⁹ But this separation turns out to create its own difficulties. One is that the basic tensions within the organization become exacerbated as the struggle over enforcement style becomes linked to the status, growth and power of organizational units.⁶⁰ A second is that the choice of enforcement style in given cases comes to be made not by a careful consideration of the case, but by the random process of which unit sees the case first, and the overall availability of people who

conduct investigations in one style or the other.⁶¹ If criminal enforcement units grew large relative to the demands made on them, and voluntary compliance units remained small relative to the external demands on them, the organization would inevitably begin dealing with many cases that might be best handled through voluntary compliance styles with criminal enforcement styles simply because criminal enforcement was available and voluntary compliance was not. So, a strategist may have less control over the cases by case choice of enforcement style than he would like, and might have to develop a general policy towards enforcement style that conditions case by case decisions.

In general, the question about how best to distribute enforcement efforts among compliance fostering visits, relatively stern audits and criminal investigations depends a great deal on what one assumes about the distribution of negligence and criminal intention in the regulated population. To the extent that one thinks violations emerge primarily from licensees who are ignorant or negligent, one would be inclined to rely most heavily on the gentle prodding associated with compliance visits. To the extent one thought that violations emerged primarily from those who were intentionally violating their obligations as licensees, he might be inclined to use covert investigative means designed to gather clear evidence not only of criminal activity, but also of criminal intent.

The general orientation of the regulatory effort might also be

reasonably influenced by the amount of time that had elapsed between the establishment of the regulatory regime, and the amount of hostility its establishment generated. The implicit idea here is that full appreciation and acceptance of new legal responsibilities diffuses through a population rather slowly, and that its rate of diffusion (as well as its extent) depends a great deal on the prima facie legitimacy of the established regulations. In addition, stern measures are assumed to be appropriate only when the potential subjects of the investigation -- perhaps even the vast majority of the people -- have understood and accepted the legitimacy of the new regulations. Until that time, the stern approaches will be rejected as illegitimate. Thus, it is probably best to rely at the outset on regulatory inspections that assume the good will of the licensees, and to shift to tougher inspections only as the regulations and the agencies enforcing them acquire a reasonable degree of legitimacy.

In sum, then, in choosing an investigative style to adopt in searching for violations and enforcing regulations, a diversified approach is desirable. Visits to promote voluntary compliance have great advantages in dealing with subjects who are public spirited, but ignorant or negligent; in laying the basis for sterner measures in the future if a pattern of misconduct continues; and in generally helping with the social diffusion of the responsibilities established for dealers under gun control statutes. Sterner civil investigations have their place when one is dealing with subjects whose violations

are persistent and potentially serious, but primarily technical, and when the more speedy and flexible measures of administrative processing are desirable. Covert investigations designed to disclose criminal conduct and intent followed by criminal investigation are probably justified only when there is some fairly strong indication that a dealer has been at least extremely negligent and perhaps malicious in his transfers. This kind of evidence might be established, for example, if traces of handguns used in crimes in a given city revealed that many of these guns had been last sold at retail by a single dealer who had a record of prior violations.⁶² While all of these investigative approaches would be available and utilized at any given time, it would probably also be desirable if the distribution of these approaches changed over time to match the gradually diffusing knowledge and acceptance of the regulations as legitimate requirements. In our current position, it is probably desirable to establish the general bias in dealing with licensed dealers toward the lighter side. This is largely true because both the dealers and the enforcement agencies are still learning about one another, and because the obligations accepted under gun control laws are still quite controversial.

c. The Implicit Standard of Care

A third major issue in the design of a regulatory enforcement regime designed to promote compliance with existing gun laws among licensed dealers is the question of how strict the liability is for

violations of gun laws. To a degree, the provisions of the gun control laws themselves answer this question. Under the Federal Gun Control Act, for example, licensed dealers are not held strictly liable if a gun they sell ends up being used in a crime, or even in the hands of a prohibited person. Their liability ends once a purchaser has signed a form attesting to his lack of disqualifying characteristics, and offered a suitable form of identification. Some state laws are a little tougher and require a dealer to wait until he has received corroborating information about his customer from police departments and others who have records that might controvert the customer's statements. But beneath this structure of formal liability is a more informal set of conventions concerning the kinds of indications that investigators, prosecutors, judges and juries will accept as establishing a degree of negligence or maliciousness that deserves civil or criminal sanctioning. Essentially the question is when does a pattern of negligence and technical violations of the gun control laws become evidence of serious wrong-doing.

This is a crucial matter for the regulatory enforcement agencies to resolve because the resolution affects the overall style and cost of the enforcement effort. The basic problem is that if a lenient standard of care is established so that a great deal of knowledge, persistence, and maliciousness must be shown by a dealer before he is judged recklessly or criminally negligent, then the quantity and character of the investigation will be much different than if there

were a more stringent duty of care. The crucial problems are that the investigators must show a pattern lasting over a period of several months or years, must have on the record some previous contacts that make ignorance an implausible defense even before sympathetic courts, and must have some additional information such as testimony from informants or recordings taken in undercover operations that indicate extreme negligence or maliciousness. At a minimum, then, a weak standard of care would require the enforcement agency to have several official contacts with the subject, and to be able to show from his records a persistent and dangerous indifference to the provisions of gun control regulations. But this alone might not be enough. Better would be evidence developed during actual transactions spaced over a period of time that revealed a dangerous attitude through statements made by the subject, or by an indifference to clear statements made by purchasers that disqualified them from acquiring guns. In short, a low standard of care would force enforcement agencies into protracted investigations of specific individuals that went well beyond mere record checks and into the realm of informants and undercover operations. The reason is simply that there is no other way to meet the evidentiary requirements for showing that a dealer was in fact violating the lenient standard of care. Ironically, then, a lenient standard of care inevitably forces regulatory agencies into more expensive and more intrusive kinds of investigations than would be necessary with a stricter standard of care.

There is one further problem that is worth noting in this area because it forms an important contrast with drug enforcement. If it is important to show a continuing, persistent pattern of negligent dealing, then it is necessary to execute several transactions with a dealer. This is as true for drugs (where the enforcement problem is to prove that a transaction was not simply an "accommodating sale" but instead part and parcel of an on-going business) as it is for guns.⁶³ But the important difference is that in the drug business repeat customers are a common and desirable phenomenon. Indeed, drug dealers prefer repeat customers to single purchase customers because they come to know and trust one another.⁶⁴ In contrast, in the gun business, repeat customers are quite unusual. Guns are not used up in quite the same way as drugs, and a person who comes back for another gun shortly after buying one would be regarded with great suspicion. This means that several different informants of undercover agents must be used in any effort to show criminally illegal dealing on the part of a licensed dealer. This fact increases the cost and complexity of any given investigation, and increases the determination of officials to bring the case to an impressive conclusion once they have started making this kind of investment.

If a low standard of care is attractive because it doesn't over punish dealers for technical violations, and unattractive because it forces enforcement agencies into more expensive, elaborate, and intrusive investigations to establish any violations at all; and if a

high standard of care has the opposite virtues and vices; where should a sensible enforcement strategy set the standard of care? One useful answer is simply to set the standard of care very high, but make the penalties for the substantive violations quite low and informal. In effect, we simplify the investigative process by setting a stringent standard of care, but deal with the problem of overpunishing by making the sanctions relatively small. This seems like a useful approach, but it is the exact opposite of the approach taken by the Gun Control Act of 1968 which established very strict penalties and therefore caused the implicit standard of care to become quite lenient. With so much resting on determinations that dealers were criminally responsible for violations of the gun control act, the implicit standard of care that has evolved is quite a loose one. In fact, in one case, federal agents had made nine separate undercover purchases from a licensed gun dealer who was operating off-premises, had refused to sign the required form, had engaged the dealer in recorded conversations about their intentions to take the guns to New York and use them in robberies, but despite this evidence, the jury failed to convict.⁶⁵ Clearly, the standard of care has been established at a very low level.

d. Federal or State Jurisdiction

In principle, there is no clear reason why enforcement efforts directed against licensed gun dealers should be a federal responsibility. Many states have laws regulating licensed dealers

that differ importantly from the federal requirements. Indeed, in at least a few states the requirements are more stringent and a dealer could be in compliance with federal law and out of compliance with state law. Presumably states should be prepared to pay some of the cost of enforcing statutes they write, and they should, therefore, be willing to mount regulatory enforcement efforts. The fact of the matter, however, is that no states seem to have taken their responsibilities for regulating gun dealers very seriously. What enforcement occurs seems to be done by ordinary state and local police investigators who seek criminal violations. And as we will see in Section III, the level of this activity is very low. As a practical matter, then, much of the effective responsibility lies with the federal government. This is justified by the fact that gun dealing involves interstate commerce, and there is a strong federal interest in protecting the capacity of states to regulate the commerce in guns within their own borders by restricting interstate sales and by establishing some minimal level of responsibility among gun dealers. And once one has justified a substantial federal presence for these reasons it is very natural and convenient to go farther and expect the federal government to do everything -- particularly when they have the enormous luxury of the federal income tax to finance their efforts. But probably the most striking thing in thinking about the proper jurisdiction for regulatory enforcement is recognizing that there is a strong argument for state and local jurisdiction as well as federal

jurisdiction and finding that little of that potential jurisdiction is filled.

2. Gun Possession and Use

If the difficulties of preventing illegal transfers prove overwhelming, a second line of attack is available to control levels of gun crimes: enforcement agencies could seek to reduce levels of illegal gun possession and use. Again, the general mechanisms are deterrence and incapacitation of those who would willingly violate existing laws regulating gun ownership and use. Of course, there might be room in this area for the promotion of voluntary compliance with gun laws through publicity campaigns that explain and justify the various provisions of gun laws, and the exploitation of police discretion to offer advice and counselling rather than enforcement when such approaches seem appropriate. But these informal, regulatory approaches come less readily to mind and are taken less seriously when "commerce" is not involved -- perhaps because we think that the state must make fewer accommodations when it is dealing with mere individuals rather than economic enterprises. At any rate, our focus in this analysis will be on the enforcement of criminal laws regulating individual gun possession and use.

The difficulties in designing an enforcement strategy to manage possession and use are similar to those encountered in trying to control transfers to proscribed persons: the laws establishing the structure of criminal liability are uneven and leave noticeable gaps;

the real culpability of those who commit violations of the laws is problematic because criminal intent is not always easy to discern -- indeed, a large fraction of the total number of violations may be committed by people who believe themselves to be totally innocent of any wrong-doing; the empirical evidence on the quantity, character, and location of the gun offenses and their relationship to actual crimes of violence remains problematic; and the enforcement methods that must be relied upon to make arrests and deter offenders are unusually intrusive. A useful place to start, however, is in looking at the empirical evidence on illegal gun ownership and use that must be the targets of enforcement strategies.

A strategist can get a view of the underlying patterns of gun ownership and use through two slightly different lenses. One is the lens provided by survey research that simply asks people about the possession and use of handguns. The second is observing the result of current enforcement activities which inevitably turn up violations of gun laws. Both methods produce a somewhat distorted view of the underlying reality. The distortion in the survey data arises partly as a result of the sampling frame used, and partly because the results are ultimately dependent on the truthfulness of the respondents. The distortion arises in observing the results of enforcement activities, because the enforcement operations are not spread evenly over the population, and because the records of police action are sometimes incomplete or inaccurate accounts of what has happened. Still, the

two methods together might provide a rough sense of the size and scope of illegal gun possession and use.

Table 6 presents recent data on handgun ownership in the United States based on surveys of the general population. The most important facts to note in this table for our purposes is that handgun ownership has increased as a fraction of households claiming to own at least one handgun, and that the current fraction is about 20%. If we imagined that each household had one possessor and one gun, then we could conclude that there were approximately 40 million people who possessed handguns in the United States. The problem, of course, is that there may be more than one handgun in the household. In fact, current estimates put the number of handguns per household at somewhere between 1.5 and 3.0.⁶⁷ In addition, however, even if a household had only one gun, it might be proper to think of that household as having several possessors since many members of the family might have access to the weapon even if they are not the legally recognized owner. Obviously, if our definitions of ownership or possession become more confused, and the available data less exact, it becomes increasingly difficult to say how many people in the U.S. possess a handgun. But a useful number might be that about 60 million people possess a gun in the sense that they have access to at least one in their household.

It is important to remember that the vast majority of that gun possession is perfectly legal. Only a few states impose requirements on people who own guns in their homes or places of business to obtain

TABLE 6

Handgun Ownership in the U.S.

(To Be Completed)

Draft - 11/08/83

identification cards or licenses to possess the weapons.⁶⁸ Of course, non-compliance with these requirements in New York, Massachusetts and Illinois seems to be fairly widespread, and so it is likely that in these states, at least, there is a substantial amount of technically illegal gun possession. But it seems unlikely that even widespread non-compliance with laws regulating gun possession in three admittedly populous states would dramatically increase the fraction of all gun possession that is illegal. The simple and important fact is that most handgun possession in the United States is perfectly legal. It may even be well motivated and rational!⁷⁰

The piece of handgun possession that is both illegal and widely condemned is possession of handguns by convicted offenders. James Blöse and Philip Cook estimate that there are about 2.3 million convicted felons in the U.S. population.⁷¹ Some recent survey data collected from imprisoned populations in several states by James Wright indicated that 55% of the imprisoned population would admit that they owned handguns.⁷² Taken together, these estimates suggest that about 1.25 million felons own handguns illegally in the United States. This is a big number. But it is also important to see that it is dwarfed by the number of people who legitimately possess handguns. The ratio of legal to illegal possession is about 40 or 50 to 1. This means that if enforcement efforts were directed generally at possession without knowing in advance that a person was entitled or proscribed from owning a handgun, a great many people who were in fact

entitled to own a weapon would be involved for every person who was in fact illegally in possession. This simple fact places a very high premium on targeting enforcement against illegal possession. Indeed, it makes enforcement against possession per se look fairly unattractive.

A much more attractive target for enforcement might be illegal carrying of handguns rather than illegal possession. The reason is simply that existing state laws are much tighter in controlling carrying than possession, and therefore that more of this kind of conduct is illegal than is true of possession. Moreover, there seems to be a broader public consensus against carrying weapons (which seems more "offensive" rather than possession which seems "defensive"). And, finally, enforcement against illegal carrying can be less intrusive because it happens on public thoroughfares rather than private dwellings. The important empirical questions are how many of the people who possess guns carry them and how often do they do it.

Two recent surveys offer some modest information on this point. A 1978 survey commissioned by the Center for the Study and Prevention of Handgun Violence and carried out by Cambridge Reports, Inc. indicated that 29% of the people who owned handguns carried their gun outside their home.⁷³ No additional information on how often the people carried their weapons was obtained. A 1977 survey of Florida residents found that 48.5% of handgun owners carried their weapons, and that of this group, 16% claimed to carry their guns "seldomly,"

19% "yearly," 27% "monthly," 4% "weekly," and fully 33% "daily."⁷⁴

Obviously, despite these studies, there remains substantial undercertainty about what fraction of handgun owners carry their guns and how often. But if we were to take the diverse estimates of the share of gun owners who carried, and impute some actual rates of carrying to words like "seldom," "monthly" or "daily" we can make a rough calculation of how many incidents of gun carrying occur in the U.S. over the year. This number turns out to be somewhere between one and two billion incidents a year.⁷⁵ Like gun possession by felons, this number is a very big number. Moreover, it is likely that the vast majority of this activity is illegal since gun carrying is tightly regulated. No doubt there are a great many police officers, security guards, and responsible private citizens who are licensed to carry handguns in these numbers. No doubt, such people also figure prominently among the portion of the gun carrying population that carries their handguns "daily" rather than "seldomly." But, still, the approximate volume of illegal gun carrying suggested by these numbers is very significant.

Even though carrying handguns is widely prohibited, and even though there seems to be more public hostility directed against illegal gun carrying than illegal possession, there is still a lingering sense that gun carrying is a technical violation rather than real crime, and therefore some reluctance about enforcing these laws. As in the case of possession, however, there is a group of people who

command little sympathy if they are found carrying weapons illegally. That group is previously convicted felons. Part of the reason for our lack of sympathy may be that we think felons have put themselves outside the bound of society, and are therefore generally less entitled to various rights and entitlements that non-felons claim. But probably the more persuasive part of our objection to felons carrying weapons comes from the fact that the presumption that a felon intends to use the weapon offensively against innocent people is so much higher than for non-felons who are caught carrying weapons. Indeed, we might even imagine that a gun-toting ex-felon is on his way to commit a crime! What this line of reasoning ignores, of course, is that ex-felons may have even more worries than the rest of us about whether they are about to be attacked since they live in a much more violent milieu, and therefore that their interest in self-defense might motivate their carrying as much as for non-felons.⁷⁶ But regardless of this point, the fact is that the society is much less tolerant of former criminal carrying weapons than people who have never been convicted of a crime. Consequently, it might be interesting to try to estimate how much of the illegal carrying is done by felons rather than non-felons.

Again, some recent data being collected by James Wright is helpful. In his interviews with prison inmates, he found that 76% of the inmates who owned handguns also said that they carried their weapons.⁷⁷ Of this group, 41% of those responding to questions about

rate claimed to carry the gun "only a few times," 35% indicated "many times," and 23% "just about all the time."⁷⁸ Again, if we use Blöse and Cook's estimate of the number of felons, use Wright's data on carrying practices in a felony population, and impute some rates of carrying to the words used by the responding inmates, we can calculate how many incidents of gun carrying by felons occur over the course of a year. This rough estimate turns out to be closer to 100 million incidents a year rather than a billion. So, one can again conclude that the amount of illegal gun carrying generated by the general population will probably be an order of magnitude greater than the amount of gun carrying generated by people with criminal histories. This is a more favorable ratio than for gun possession, but it still implies that if enforcement efforts were focused on the offense of gun carrying without narrowing its focus more precisely, a large number of people who would think of themselves as being innocent, and who would look innocent to prosecutors, judges and juries, would be swept into the criminal justice system.

The view of the world of illegal gun possession and use one gets as one examines the results of police operations is a little different, a little more inconsistent, and older. The data came from Albert Reiss' and Donald Black's pioneering work on policing for the President's Crime Commission in 1967. Analysis of operational statistics for nine months in 1967 from two specialized units of the New Orleans Police Department (tactical patrol and canine patrol)

indicated that approximately 48,000 stops, followed by about 25,000 frisks yielded only 113 weapons.⁷⁹ This suggests that the level of illegal weapons carrying in New Orleans is quite low, that the New Orleans police are not very good at targeting stops on those likely to be carrying weapons, or some combination of the two. The data they themselves collected by observing street stops in the high crime areas of Boston, Chicago and Washington present a somewhat different picture, however. They observed 1426 street encounters; 224 of these encounters resulted in a personal search; these, in turn, produced 50 weapons -- 27 of which were guns.⁸⁰ Thus, the yield in weapons discovered was less than 0.3% in New Orleans, and more than 3.5% in the combined sample from their cities. The gun yield alone in Boston, Chicago and Washington was about 1.9%. The difference in yields per search are even more striking: 0.45% in New Orleans compared with 22.3% for weapons and 12.0% for guns in the three city sample! So the picture that one gets from the observational studies in the three cities is that weapon and gun carrying is much more common than in New Orleans, or that the police are much better at figuring out who should be stopped, and even better at figuring out who should be searched. Of course, the differences could be accounted for in other ways as well. But the general impression one carries away from these old and imperfect bits of information is that weapons carrying is encountered a little less frequently by the police than one might have imagined given our calculations above, and that there might be rather large

differences among police departments in terms of their ability to distinguish those who are likely to be carrying concealed weapons from those who are not.

3. Strategies Against Illegal Possession and Carrying

Clearly, the world of illegal possession and carrying presents a broad front for enforcement action. The problem is focusing the attack on not only the illegal acts, but also the criminally motivated. Broadly speaking, three approaches are possible.

The first is to make enforcement efforts against possession and carrying a simple extension of activity now directed at controlling other kinds of crime. Investigative cases against burglars or drug dealers might sometimes lead to charges for illegal weapons possession and carrying in addition to the primary charges. Patrol activity that brought the police into contact with domestic assaults, incidents of drunken rowdiness, or traffic violations might also lead to charges for weapons violations. It might even turn out that directed patrol strategies targeted on suspected robbers would lead to weapons charges against the suspects more often than robbery charges because the offenders committed weapons violations more often than robbery.⁸¹ In any case, one way to attack illegal possession and carrying is simply to make the charges when they become appropriate in the course of more generally targeted enforcement activities.

There is a tendency to think of such activities as less effective in deterring illegal gun possession and use than efforts focussed

explicitly on these offenses, but there is no necessary reason to suppose that this would be true. The implicit assumption that links the two is the expectation that a strategy targeted explicitly on gun possession and use would result in higher levels of enforcement. But this need not be true. It could easily turn out that the most productive way of using enforcement resources to attack illegal possession and carrying would be to mount a general attack on criminal offending, and file gun charges when they are appropriate both at the periphery and at the center of such an attack. Focussing explicitly on guns might offer no special advantages in generating leads and developing evidence of these offenses, and might easily dissipate the focus of gun enforcement efforts by spreading them over both legal and non-criminally motivated technical violations of the gun laws.

A second line of attack is to develop a specialized strategy against illegal possession and carrying. The most common approach to this goal is to create a separate organizational unit with special responsibilities. Thus, for example, when encouraged to step up its efforts against illegal gun activity, the Rochester, N.Y. Police Department established a special Gun Squad to invent and carry out a gun enforcement strategy.⁸² Establishing separate organizational units for gun enforcement may have some advantages in terms of guaranteeing a minimum level of effort against guns, providing an opportunity to develop some specialized methods or activities that turn out to be particularly valuable in gun enforcement but to have

little value elsewhere (for example, close relations with licensed dealers or the tracing capabilities of ATF), and raising the organization's interest in gun enforcement. But the technique also has liabilities. It can reduce the efforts of other parts of the organization in enforcing against guns by seeming to take all the responsibility for gun enforcement, or by subjecting the rest of the organization to elaborate requirements for coordination with them when they are making gun cases. In addition, while the creation of specialized units often facilitates efforts to account for money received for a special task like gun enforcement, the creation of such units often creates great animosity among more general purpose units in the organization who rise to eliminate the special unit once the special money or interest that caused it to come into being fades from the scene. So, it is by no means obvious that the best way to create a specialized focus on guns is to create a specialized unit.⁸³

The alternative approach is to give some special emphasis to gun enforcement in the context of more general enforcement activities. This could be done simply by equipping officers to make gun arrests by providing them with leads or special equipment that make gun pinches easy to make. Another approach would be to formally or informally reward officers for unusual effectiveness in making gun cases. A third might be to adopt a general strategy of enforcement that turns out to give special emphasis to guns. All of these approaches are on display in the Chicago Police Department.⁸⁴ They have an overall

strategy of policing ("aggressive preventive patrol") that puts active enforcement of existing gun laws near the center of their concerns. As they describe it, they don't simply sit back and wait for crimes to occur, they patrol in a way that will bring them into contact with "the bad guys." Moreover, since in their view a man on the street with a gun is looking for trouble, a high level of gun enforcement indicates not only a willingness to be active, but also a willingness to focus that activity on those who are most likely to be offenders. This overall philosophy has deep historical roots, but is also accentuated by formal administrative systems which give extra "points" to officers who make gun arrests.⁸⁵ Finally, to carry out their strategy of patrol, the Chicago Police are well trained in making stops of citizens non-confrontational. The result is that the Chicago Police have a much higher rate of gun enforcement than other major city departments in the U.S., and they accomplish this goal not by specializing and narrowing the responsibility for gun enforcement, but by generalizing and broadening it throughout the department and its activities.⁸⁶

The special tactics that might be used by a generalized patrol force and increase their level of enforcement against illegal possession and carrying could include the following: 1) directed patrols against areas and people who are suspected of high levels of gun robbery; 2) priority emphasis to any calls for service that involve guns; 3) active interest in guns that might be available to

people in assault situation -- both domestic and public; 4) active questioning of people who are stopped for minor offenses or on "reasonable suspicion" about their ownership or use of guns; 5) perhaps even the use of handheld magnetometers to conduct non-intrusive "frisks" of people who are stopped on the basis of reasonable suspicion. All of these proposals are designed to put police closer to incidents of illegal gun possession and carrying, and to encourage them to be more alert and active in discovering these incidents among the population that comes to their attention. The price of such activity, of course, is greater intrusiveness on the part of the police, and a greater risk that gun enforcement will encounter illegal but not criminally motivated gun possession and carrying.

A third approach to enforcing against illegal gun possession and use is to narrow the focus to convicted felons now on probation and parole. The arguments in favor of such an approach are that a battery of laws, ordinances and administrative rules make gun possession and carrying by such people illegal; that the legal system and the general citizenry are particularly intolerant of such activity since it seems much more likely to be criminally motivated than similar conduct exhibited by people who have not been convicted of felonies; and that effective action against such offenders is much likely due to the possibility of parole revocation as well as criminal conviction for the substantive offense. The arguments against such an approach

is that it denies equal protection to the people on probation and parole, and harms their chances of rehabilitation by subjecting them to unusual levels of police interest which stigmatize them in the eyes of the community.

In terms of the civil liberties interests at stake in the design of gun enforcement strategies, then, there is an interesting tension between a general approach to gun enforcement which seems to advance the interest in equal protection and non-discrimination in enforcement activity but invites an overly broad approach to the problem, and a more narrowly focused effort which seems to advance the interest in narrowing the scope of police interest, but does so only at the price of focussing attention on a limited portion of the population. What this reflects, of course, is our general ambivalence towards "targeting" enforcement activities. On the one hand, we prefer targeting because it narrows and justifies enforcement interest in one part of community life. On the other hand, we dislike targeting because it exposes only a piece of the community to the hazards of police attention, and thereby raises questions about fairness and equal protection.⁸⁷ In general, the guide to resolving this tension is to insure that the targeting principle is non-discriminatory (in the sense that it is not based on prejudices that are explicitly prohibited by the constitution such as race, political beliefs, religion, and so on); that it is rationally related to legitimate law enforcement interests; and that it is clearly articulated and

can't quite bring ourselves to impose a general responsibility on those who transfer weapons to satisfy themselves that the transferee is not a felon, despite the fact that we seem to agree that felons should not have access to guns. Instead, we limit the responsibility by imposing it only on dealers (leaving open the question of who is a dealer), and by absolving the dealer from further responsibility once a customer has claimed to have no disqualifying characteristics. In some important states, the responsibility of transferors is broader than this, and people may be punished for transferring guns to people who are proscribed from owning them, but these laws make such offenses misdemeanors rather than felonies, and seem to be only rarely enforced.

These statutes provide the routes that enforcement agencies, both federal and local, regulatory and criminal, must follow in seeking to break the connection between legitimate gun ownership and use, and criminal attacks committed with handguns. In seeking to control illegal transfers, both regulatory and criminal approaches are available. Licensed dealers are broadly subject to regulatory efforts guided by targeting policies that could be based on randomness, on profiles based on intuitive judgments about where violations are most likely to occur, or on profiles that are systematically developed by analyzing the results of randomly targeted inspections. Probably the best strategy for regulatory enforcement involves a mix of random and targeted elements with the targeted elements guided by the results of

the random efforts. Licensed dealers can also become the targets of criminal investigations if they seem to display a pattern of negligence. This pattern of negligence might be revealed by a history of repeated violations shown in regulatory inspections, or by the discovery that guns sold by a given dealer turned up very frequently in criminal offenses. In general, the mix of regulatory and criminal enforcement directed at licensed dealers should probably shift over time from almost exclusive reliance on regulatory efforts to an increasing, but still small reliance on criminal investigations. The reason is simply that it takes times to erode the presumption of innocence when dealing with violations of gun laws that are not widely understood or supported.

It is also important to think of strategies focused on illegal transfers made by people who are not licensed dealers. There can be an informal essentially regulatory piece of this activity as well, but the vast bulk of this activity will have to be criminal since there is no civil administrative structure governing non-dealers who nonetheless transfer their weapons. The most plausible strategies in this area involve undercover operations directed against criminals and fences who are likely to have supplies of guns which they are willing to transfer to proscribed persons. It may also turn out to be effective in controlling illegal gun transfers to attack burglary and fencing operations which deal in guns as part of their overall criminal activity, for it seems clear that stolen guns are unusually

important to those proscribed persons who commit crimes with guns.

In addition to controlling illegal transfers, enforcement efforts could be directed against illegal possession and use. Probably the most attractive strategies in both areas involve concentrating on felons who own or possess guns since that increases the likelihood that the enforcement agencies are dealing with people who are not only violating gun laws, but doing so with something like criminal intent. Indeed, there may be a special responsibility in this area to insure that felons on probation and parole do not possess or carry weapons. In addition, however, enforcement agencies might generally position themselves to observe gun violations by such measures as patrolling heavily in areas where street gun robberies occur, by placing high priority on calls for service that involve "man with gun," and active questioning of people in domestic assault or street stop situations about their access to weapons.

These are all logical possibilities. What are real possibilities depends a great deal on the political and administrative realities as well as the logical possibilities. Now, it is always tempting to assume that the only possible things to do are what we are now doing. And that, of course, is not always the case. Usually there is room in any given political and bureaucratic setting for some invention and innovation on behalf of better ways of getting at particular problems. But it is also true that if one wants to get a sense for what is possible to do as well as merely conceivable, a good place to start is

by examining current practice. That is what we intend to do in the next section.

III. CURRENT ENFORCEMENT CAPABILITIES

To have life, the various enforcement strategies describe above must be fitted into an existing political and bureaucratic context. But not all of the strategies will fit easily. Some would only be successful if major (and unlikely) changes occurred in the world. Others are close to current practice. And still others are different from current practice and therefore require changes, but are not beyond the realm of possibility: a moderately bold, able and determined manager could breathe life into them. Our task in this part of the report is to describe current practices in both federal and local police agencies, to see where their distinctive competences lie, to determine where the existing strengths and weaknesses of the combined enforcement effort lie, and to imagine where new strength could be built from existing capabilities that could significantly strengthen our overall effort. That will set the stage for the conclusion in which some key areas for development and experimentation are identified.

A. Federal Enforcement Capacities

The key federal agency involved in enforcing gun laws is the Bureau of Alcohol, Tobacco and Firearms in the U.S. Department of Treasury. To understand its strengths and weaknesses in an overall strategy against illegal gun distribution, possession and use, it is

important to understand its current mission, its past history, its current problems, and its guiding spirit and aspirations.⁸⁸

The mission of ATF is broad and complicated. Part of the complexity derives from the fact that it is responsible for regulating the supply and use of four quite different commodities -- the three that are identified in its name (alcohol, tobacco and firearms), and a fourth -- explosives -- that is central to its crime-fighting activities but has not yet been acknowledged in its name. Another equally important part of ATF's strategic problem, however, arises from the fact that its responsibilities encompass both regulation of the licensed sectors of these businesses, and criminal enforcement against targets both within and outside the legitimate sectors of the industry. This means that two quite different capabilities, and two quite different attitudes towards the industry must be housed within the same organization. But perhaps the greatest problem of all is to know for what ultimate purpose they are regulating and enforcing. Is it to protect revenues flowing to the federal government from these heavily taxed industries? Or is it to protect the society from the health hazards that these commodities represent? Or, is it to control violent crime associated with the illegal distribution and use of these commodities? It is important to understand that these tensions cannot be permanently resolved; they are built into the mandate that guides ATF's activities. Which of these purposes, commodities and styles has priority at any given time within ATF is partly a matter of

rational choice, but much more importantly the result of some combination of history, sources of political opposition and support, and the internal inclinations and capabilities of the organization.⁸⁹ To understand ATF's current and likely future strategy, then, it is necessary to examine these factors.

For most of its bureaucratic life, ATF was not a separate unit within the Department of Treasury. Instead, it was a tiny operation within the vast bureaucracy of the Internal Revenue Service. As part of IRS, ATF understood that its primary mission was to protect revenue by collecting taxes that were due from the alcohol and tobacco industries, and by suppressing illegal producers who sought to evade high federal taxes by operating clandestinely. This orientation made alcohol the most important commodity in ATF's universe, and regulation much more important than criminal enforcement. The role of criminal enforcement was limited to chasing boot-leggers in the hills of Southeastern America.

Gradually, however, both the external and internal environment of ATF changed. The nation became increasingly concerned about violent crime, and Presidents sought to involve the federal government more extensively in the fight. The jurisdictions of investigative agencies within the Department of Justice were steadily enlarged. The Department of the Treasury, which had had a role in criminal enforcement dating back to the days of prohibition, tried to keep pace and to protect its position as a law enforcement agency along-side the

Draft - 11/08/83

Department of Justice. An Assistant Secretary of Enforcement was created in the Department of Treasury to oversee the operations of agencies such as U.S. Customs (which had an important role in drug enforcement), the U.S. Secret Service (which was involved not only in protecting presidents and therefore domestic terrorism, but also the suppression of forgery), and the IRS Intelligence Division which was involved in criminal enforcement of the tax laws (which had proven to be an important device for attacking organized crime and narcotics trafficking). Such a person was also potentially interested in the activities of ATF -- particularly when new statutes gave them jurisdiction in the areas of firearms and explosives as well as alcohol and tobacco.

Inside ATF, some aggressive agents had begun to assume powerful positions in the organization, and to chafe at the restrictions imposed on them as a subordinate unit of the IRS with its interest in revenue protection and regulation as against crime fighting and criminal enforcement. For these agents, the firearms and explosives laws were a godsend. Finally they had a respectable law enforcement mission! It was also an advantage for the Assistant Secretary for enforcement for it gave him a new organization that might turn out to be at the center of the federal government's attack on violent street crime, and thus an important asset to any president who wanted to have some federal response to crime in addition to a state and local response.

The combination of external internal demands and internal aspirations culminated in ATF becoming an independent agency. The strategy of revenue protection through tax collections from the alcohol beverage industry and suppression of moonshiners gave way to a strategy of controlling violent crime by attacking the illegal distribution and possession of guns and explosives. The agency's operations gradually moved from the hills of Kentucky to the streets of Chicago and Los Angeles. For a while, controlling violent crime became the dominant purpose, guns and explosives became the most important commodities, and criminal enforcement became the most important activity.

This strategy was not greeted everywhere by enthusiasm, however, and independence turned out to be a mixed blessing, for while it gave more freedom of action, it also made ATF's activities much more visible and vulnerable to those who were hostile to its new strategy. Eventually, the pro-gun forces struck at ATF -- accusing it of major violations of civil liberties, as well as ineffectiveness. The viciousness of these attacks, plus the cumulative effects of constant threats to re-organize federal enforcement efforts, has blunted the enthusiasm of ATF for its current strategy and created significant uncertainty about its future.

But in recent strategic planning exercises, it has stayed with the basic strategy that brought it independence. A strategic plan written in 1981, continues to set the control of violent crime as the

dominant purpose of the organization, though revenue enhancement has become a strong secondary purpose in these days of vast federal deficits.⁹⁰ Given current hostility to over-reaching federal regulation, consumer protection has now become a distant third -- an old embarrassment to be repudiated rather than a bold new front to be opened. The interest in controlling violent crime guarantees the future importance of guns and explosives compared with alcohol and tobacco. Criminal enforcement seems slightly more important than regulatory efforts, but as we will see exactly what criminal enforcement is supposed to do to control violent crime remains somewhat unclear. So it is not so much that the strategy has now changed as that the self-confidence in pursuing it has been blunted. And given ATF's limited resources, that blunting of self-confidence and enthusiasm is quite important.

What all this implies for the current and future capacity of ATF seems to be the following. First, the limited resources of ATF will always be split among the various commodities for which they are responsible. This means that only a portion, and perhaps a declining portion of ATF's efforts will go to controlling guns. Second, it seems clear that alcohol and tobacco are nearer and dearer to the regulatory side of ATF than guns, and that guns are much more important to the criminal enforcement side. This means that whatever resources ATF applies to guns are likely to be used to support criminal enforcement activities rather than regulatory efforts.

Third, the most broad and aggressive approaches of the Agency against guns will be rejected as politically unfeasible. Taken together, these orientations leave ATF in a position where they can do less for gun enforcement than one might have hoped.

Consider, first, their role in regulating federally licensed dealers. ATF's major problems in this area have always been limited resources to conduct regulatory inspections, and uncertainty about whether this assignment should be given to criminal enforcement or to regulatory.⁹¹ Criminal enforcement wanted the jurisdiction to protect their central role in gun enforcement; regulatory enforcement, pre-occupied as usual with alcohol and strapped for resources in an organization that was increasingly animated by a desire to contribute to the nation's war on crime, was willing to cede the jurisdiction. But having gotten the jurisdiction, criminal enforcement found it hard to take routine dealer inspections seriously. The net result was that the agency kept trying to reduce its workload in this area by trying to cut the number of federally licensed dealers.

This angered pro-gun people who wanted the convenience of having a federal dealer's license, and saw in ATF's reluctance to grant licenses yet another indication that any regulation of guns would lead to much tighter restrictions than had been agreed to in the legislation. It may have satisfied anti-gun people who thought that by reducing the number of federally licensed dealers they were shrinking the total number of people who could deal in guns. But if

Draft - 11/08/83

they had remembered that a federal license established tight obligations as well as privileges, and that a person without a license could transfer a small number of weapons invisibly and without obligation, then they might have seen that the effort to restrict dealers' licenses was not necessarily a gain for increased control over gun distribution, and could well be a loss. So, ATF's policies with respect to granting dealers' licenses brought little useful political support, and left ATF with a group of federal licensees that was too large to regulate comfortably with their available resources, and too small to have really spread the structure of civil and criminal liability broadly through the universe of people transferring handguns.

A further problem was that no one really took responsibility for targeting regulatory and criminal investigations within the universe of license dealers. Policies directed that new applicants be investigated before routine compliance inspections, and that dealers who described themselves as "pawnshops" be subjected to closer scrutiny than other kinds of dealers, but there was no empirical justification offered for these priorities. In short, ATF's regulatory policies directed at licensed dealers remained inadequately funded and guided.

This would not necessarily be a problem if there were substantial state or local resources to fill the gap. But the fact of the matter is that there were virtually no state resources committed to enforcing

laws requiring dealers to be licensed and to follow certain procedures in transferring weapons. Small as the federal effort was when juxtaposed against the volume of activity to be regulated, it was the vast majority of the nation's regulatory activity. So, the difficulties in the federal regulatory program mean that there is almost no national capacity to require dealers and more casual transferors to accept their responsibilities in transferring weapons, and thus nothing to prevent guns from reaching proscribed purchasers through their agency.

On the criminal enforcement side, one finds an equally confused strategy. The early days of ATF criminal enforcement against guns were marked primarily by enforcement against illegal possessors of weapons -- usually felons designated as "significant offenders."⁹² This had the virtue of being targeted on criminally motivated people, and using federal resources directly in the cause of controlling violent crime. But it was also criticized as a duplication of local enforcement efforts, and a waste of scarce federal resources that should be used to control the interstate commerce in guns. Gradually, federal attacks on illegal possession gave way to attacks on gun commerce through undercover operations against "interstate gun runners" and scofflaws." But these cases proved difficult to make so that the overall volume of activity seemed to decline, and the people caught in the nets hardly resembled the determined criminals and large, organized firms that the imagery of "interstate gun runners

suggested." The attack on "scofflaws" roused the ire of both the pro-gun and civil liberties groups and gradually ceased.⁹³ Demands from OMB for "quality" cases over "quantity" simply resulted in ATF bundling together several investigations in a limited geographic area and making the arrests simultaneously as though the cases were related.

The basic problem, of course, is that there were very few big gun trafficking operations. Most of the trafficking was being done by the dealers and private transferors that were being neglected on the regulatory side, and by burglars and fences who were much better known to local enforcement agencies than to the feds. The only organized groups involved in gun running were political groups such as the IRA that were interested primarily in getting guns out of the U.S. So, it was hard for criminal enforcement to find suitable targets in gun distribution, and they were discouraged from going after illegal possession despite the fact that the federal laws in this area were probably tighter than most state laws.

This confusion over the proper targets of criminal enforcement remains. In the 1981 Strategic Plan, ATF describes its criminal enforcement activities against illegal firearms distribution and use in terms of five distinct elements: 1) a domestic trafficking strategy; 2) a firearms theft strategy; 3) a domestic extremist groups strategy; 4) a machine gun and silencer strategy; and 5) an international strategy. The "domestic trafficking strategy" in turn,

identifies seven distinct objectives including the following: 1) to investigate the most significant firearms trafficking cases...; 2) to deploy resources in high crime urban areas...; and 3) to target major offenders such as narcotics traffickers who may also be dealing in or employing firearms.⁹⁴ What is interesting about this formulation is how unimportant the objective of "making the most significant firearms trafficking cases" is. True, it is listed as the first objective of the first strategy. But this objective, which one might have thought would define the whole area, is surrounded by a great many other activities which seem to be given equal importance. Extremist groups and thefts are as important as "domestic trafficking." Even more importantly, within "domestic trafficking," the effort seems designed more to position the agency to attack known criminals rather than attack illegal transfers. This strategy reflects the bitter experience of ATF in trying to attack gun commerce, and expresses a realistic sense of what sorts of activities will be politically supported and administratively feasible.

The crucial question raised by this strategy is if this is all that can be done in the criminal enforcement area, is it worth doing, particularly in a world where regulatory efforts might be much more valuable? My answer is that ATF could make a more useful contribution to the nation's overall efforts to control illegal gun distribution and use if it were to spend more of its time and attention in this area on regulatory efforts against licensed dealers. I would be

reluctant to abandon the commitment and leadership that now comes from ATF's criminal enforcement interest in guns. But it would probably be more useful if the actual resources available to ATF were used in regulatory activities where their contribution is both unique and potentially quite valuable rather than in criminal enforcement where it is hard to give them a suitable target for their efforts.

In sum, then, ATF's current strategy is leading them away from potentially useful contributions and towards more doubtful enterprises. The commitment to gun enforcement, lodged in the criminal enforcement side of the enterprise, is tied to criminal enforcement activities whose value in controlling illegal distribution and use is quite doubtful. The regulatory side has an important contribution to make in gun enforcement, but the opportunity is being neglected. This is a situation that is difficult but not impossible to change. A crucial part of building the opportunity to change is for ATF to step back and rethink its objectives in the gun area with its congressional and political overseers. That has not occurred because the current policy debates in this are ideological and expressive rather than realistic and instrumental.

B. State and Local Enforcement

Throughout the United States, the police arrest 150,000 to 200,000 people for weapons offenses, such as illegal possession or carrying, each year.⁹⁵ Exactly how they manage to make these arrests is unclear. A priori, several different mechanisms can be imagined.⁹⁶

One possibility is that weapons arrests are the by-products of enforcement activities aimed primarily at other offenses. Reactive investigations into offenses such as murder, rape, assault, burglary, and even auto theft might result in weapons arrests if nothing else can be charged against a prime suspect or if the prime suspect is arrested in the company of others who happen to be committing a weapons offense at the time of the arrest. Proactive investigation directed at drug dealers, numbers banks, extortion rackets, and loansharking might also lead to weapons arrests for the same reason. Similarly, ordinary patrol operations designed to respond to complaints or to enforce traffic laws could easily produce weapons arrests as a by-product of their operations. If people complain about people brandishing or discharging weapons and patrolmen arrive on the scene quickly, they will make a weapons arrest. If patrolmen stop a person for drunk driving and a superficial frisk of the driver reveals a handgun, a weapons arrest will probably result. Thus even if the police make no special efforts to make arrests for weapons offenses, it is conceivable that they will generate large numbers as a "resultant" of operations mounted for other purposes.⁹⁷

A second possibility is that weapons offenses are generated by special organizational arrangements designed to produce them. One can imagine, for example, specialized weapons units analogous to those now maintained to control drugs, gambling, and vice. Surely it is conceivable that arrests for illegal transfers of, possession of, and

carrying of handguns could be made by the same mixture of investigative, surveillance, and undercover operations that now produce arrests for illegal drug transactions and illegal sex acts. Or one can imagine focusing the attention of the patrol force on weapons arrests by giving special recognition to patrolmen who make them, by training them in patrol procedures helpful in making weapons arrests, by providing them with operational intelligence about patterns of weapon carrying, or indeed, by giving weapons complaints high priority among calls for service.

Table 7 summarizes these various mechanisms for producing weapons arrests. Since none of these mechanisms precludes any other, one would expect the aggregate pattern of weapons offenses to include contributions from each cell of Table 7. Our questions, however, are as follow: 1) which of these mechanisms currently contributes the most to overall weapons arrests? 2) which sectors seems to hold the greatest potential for expanding current levels of enforcement? and 3) what would be the side effects of seeking expansion in any one of the sections? We have investigated this question in two different ways. First, we have looked for the major determinants of weapons arrests by formulating a simple regression model and testing it against empirical data for 30 cities in three years. Second, we have tried to refine the picture of weapons enforcement by analyzing samples of reports describing weapons arrests in 8 different cities. The results of these preliminary investigations are presented in the

TABLE 7

Mechanisms for Producing Weapons Arrests

Type of Strategy	Investigative Units	Patrol Units
I. Nonspecialized with respect to weapons		
A. Reactive: following a crime	Robbery investigation reveals weapons violations	Domestic disturbance call reveals weapons violations
B. Proactive: in advance of or during a crime	Narcotics surveillance reveals weapons violations	"Street stop" of suspicious person reveals weapons offense
II. Special efforts against weapons		
A. Reactive: following a crime	Follow-up investigation of armed robbery locates gun dealer who provided	Weapons complaints receive high priority in dispatching
B. Proactive: in advance of or during a crime	undercover operation weapon against gun dealers	Weapons arrests given special recognition by supervisors

following pages. In addition, we have received additional information about weapons enforcement practices from the Police Executive Research Forum's Task Force on Gun Enforcement.

1. Proactive Patrol and Weapons Enforcement

The regression model hypothesized that the observed level of weapons arrests would be determined by various factors that provided the police with opportunities and incentives to make arrests. Thus we hypothesized that observed levels of weapons arrests in a given community would be determined by (1) the density of guns in the community; (2) the scope of the local gun laws; (3) the general proactivity of the local police; (4) the vigilance and willingness of the community to report disturbances to the police; (5) the rowdiness of a community, which would give police frequent excuses to intervene; and (6) police interest in enforcing gun laws.

Obviously, serious conceptual and empirical problems arise in developing convenient operational measures of these variables. In fact, we have so far not succeeded in measuring vigilance, rowdiness, and police interest very reliably. But measurements of the other variables have been more satisfactory. We measured gun density with the index developed by Philip J. Cook, which takes the average of the fractions of suicides and homicides committed with guns in a given locale.⁹⁸ The scope of local gun laws was measured by an index that assigned points to local laws according to how much opportunity they gave to the police to make gun arrests. In this index, the existence

of carrying laws counted most heavily, but laws requiring identification cards for possession and proscribing possession by minor, alcoholics, felons, and so forth were also given some weight. Police proactivity was measured by total arrest rates for drunkenness, disorderly conduct, vagrancy, stolen property, vandalism, suspicion, and miscellaneous Part II offenses as reported in the Uniform Crime Reports. Since these arrests are made primarily at the initiative of patrol officers, total arrest rates in these categories give some indication of how noseey and aggressive local police departments are.

Preliminary results with the regression model indicate that police proactivity is probably the single most important variable in determining levels of weapons arrests.⁹⁹ In many different specifications of the model with many different combinations of explanatory variables, police proactivity always emerges with the appropriate sign and with a large and significant coefficient. Gun density and the scope of gun laws all behave as expected, but their effects are less clear and robust as different specifications are tried. Thus the regression model using aggregate data suggests that general police proactivity is probably the most important explanation of observed levels of weapons arrests.

To check this general conclusion and to refine our understanding of how weapons arrests were commonly made, we also visited 8 different cities -- Atlanta, Boston, Chicago, Los Angeles, Miami, Newark, St. Louis, Washington, D.C. -- and analyzed samples of incident reports

describing the situations in which weapons arrests were made.¹⁰⁰ Obviously, some question about the accuracy of the incident reports exists, particularly since weapons arrests may involve searches on the border line of legality. But for simple purposes, such as a description of which units made an arrest and whether the investigation was initiated by a complaint or by something the policeman observed, the incident reports provide satisfactory evidence. The questions we asked in looking at the incident reports were quite simple: (1) the kind of weapon involved -- (we restricted our attention to guns) -- (2) which police units made the arrest; (3) whether the arrest was the result of a complaint, an on-view intervention, or an ongoing investigation of some kind; and (4) the demographic characteristics of the person arrests.

The findings of the survey are also easy to describe. First, handguns were involved much more frequently than long-guns in weapons arrests in these cities. Typically, more than 80 percent of the arrests involved handguns. Second, the vast majority, more than 80 percent, of the arrests were made by patrol units rather than investigative units. Third, with respect to the circumstances under which the police made weapons arrests, some substantial variation occurred across the cities. Table 8 presents the results. Atlanta is the most reactive city with about two thirds of the weapons arrests being the result of complaints. Miami, St. Louis, Chicago and Los Angeles are the most proactive with only about 40 percent of their

Table 8

Circumstances Surrounding Weapons
Arrests in Eight American Cities

<u>City</u>	Response to Complaint (Reactive)	On-View (Pro- Active)	Investi- gation	Other	Total
Atlanta (N=146)	64%	31%	1%	3%	100%
Boston (N=301)	52%	38%	10%	0%	100%
Chicago (N=200)	42%	51%	4%	3%	100%
Los Angeles (N=106)	42%	51%	4%	3%	100%
Miami (N=178)	34%	49%	10%	7%	100%
Newark (N=176)	27%	69%	4%	0%	100%
St. Louis (N=155)	39%	53%	8%	0%	100%
Washington, D.C. (N=178)	54%	37%	9%	0%	100%

arrests produced by complaints. Boston and Washington occupy the middle ground with about half their arrests emerging from complaint situations. It is interesting to note that "investigations" account for relatively few arrests in the five cities surveyed. The fact that the relatively proactive cities were also the cities that had higher rates of weapons arrests lends support to the notion that shifting to a proactive patrol strategy will increase the number of weapons arrests in a city.

The results of our investigations of weapons offense are paralleled by the findings of a recent analysis of the circumstances surrounding firearms confiscations by the Police Executive Research Forum.¹⁰¹ Their method involved a review of all firearms confiscations made in 14 different police departments from May to June, 1981.¹⁰² They discovered that 54% of all firearms confiscated were the result of citizen requests for service, 32% were the results of police on-view activity, and 11% were the results of on-going investigations.¹⁰³ This evidence is not strictly comparable to ours since it concerns all firearms confiscations which includes incidents of homicide, assault, and robbery as well as weapons offenses. In fact, only 45% of the weapons confiscated were confiscated on the basis of "weapons-only" violations.¹⁰⁴ When we restrict our attention to only these incidents, we find that patrol units rather than investigative units made the vast majority of the confiscations in all 14 cities.¹⁰⁵ Table 9 presents the data.

Police Units Involved in Firearms Confiscation
for Firearms Specific Charges

<u>City</u>	<u>Patrol Unit</u>	<u>Special Unit</u>	<u>Detective/ Investiga- tion</u>	<u>Other</u>	<u>Total</u>
Colorado Springs	0% (0)	0% (0)	0% (0)	0% (0)	0% (0)
Davenport	100% (5)	0% (0)	0% (0)	0% (0)	100% (5)
Evanston	100% (1)	0% (0)	0% (0)	0% (0)	100% (1)
Flint	100% (21)	0% (0)	0% (0)	0% (0)	100% (21)
Fresno	76% (13)	18% (3)	0% (0)	6% (1)	100% (17)
Garden Grove	100% (2)	0% (0)	0% (0)	0% (0)	100% (2)
Memphis	89% (51)	2% (1)	7% (4)	2% (1)	100% (57)
Minneapolis	100% (23)	0% (0)	0% (0)	0% (0)	100% (23)
Newark	67% (40)	10% (6)	10% (6)	13% (8)	100% (60)
Oklahoma City	91% (69)	1% (1)	0% (0)	8% (6)	100% (76)
Rochester	83% (19)	4% (1)	13% (3)	(0)	100% (23)
San Diego	66% (27)	0% (0)	0% (0)	34% (14)	100% (41)
Santa Ana	86% (12)	7% (1)	7% (1)	0% (0)	100% (14)
Toledo	96% (25)	0% (0)	0% (0)	4% (1)	100% (26)

Not unexpectedly, then, it appears that the vast majority of weapons arrests emerge from the patrol column of Table 7. Investigations account for only a small fraction. In addition, very few investigations appeared to be aimed directly at weapons violations as weapons violations, and none emerged from specialized weapons units. Thus the specialized weapons investigative mechanism is almost nonexistent. Within the patrol column, it appears that reactive patrol can account for a large number of weapons arrests. If a department shifts to a proactive strategy, however, weapons arrests will increase. It is almost as if complaints operate as a floor for weapons enforcement activity, and the greater proactivity adds weapons arrests to that basic floor. Unfortunately, our survey of incident reports could not reveal whether the proactivity was specially aimed at weapons nor in fact could it reveal the administrative mechanisms that encouraged a proactive approach to patrol. Thus it is not clear how much could be gained by giving special emphasis to guns in proactive patrol nor how to go about doing this. Still, the survey data buttresses the implications of the regression model: aggressive patrolling seems to be the key in improving enforcement against illegal carrying and possession of weapons.

2. Proactive Weapons Enforcement, Race, and Youth

The suggestion that "aggressive patrol" is the key to weapons arrests immediately raises the question of who will bear the brunt of the increased scrutiny involved in such tactics. The worry,

of course, is that minorities and youth will be the ones who are arrested more frequently as police shift to more aggressive means of making arrests. The incident reports we analyzed provide some insight into this issue because they included information on the demographic characteristic of the people arrested. Table 10 presents the results.

Several points emerge from Table 10. First, minority groups are way over-represented in arrests for weapons violations. Youths seem less over-represented. Second, the amount of over-representation does not seem to differ much between arrests made in response to complaints, and on-view arrests. As one reads across the rows from arrests made in response to complaints to arrests made as the result of on-view interventions, one might expect the fraction of cases involving minorities and youth to increase. Generally, that is what one does observe. What is surprising, however, is that the differences in the populations arrested by the different techniques are relatively small: minority populations are a very large fraction of those arrested in response to complaints, and, in most cases, are only a slightly larger fraction of more arrested in the on-view interventions; youthful populations are a fairly small fraction of those arrested by complaint and are only a slightly larger fraction of more arrested in on-view situations.

Even more important is the third point: the largest changes in the characteristics of the population arrested are not associated with a generally proactive posture. The largest differences in the

Table 10

Demographic Characteristics of Those
Arrested for Weapons Offenses
By Circumstances of Arrest

City	<u>Complaints</u>			<u>On-View Interventions</u>		
	<u>Percent Minority</u>	<u>Percent Minors</u>	(Number)	<u>Percent Minority</u>	<u>Percent Minors</u>	(Number)
Atlanta	72%	17%	(86)	86%	11%	(43)
Chicago*	73%	18%	(84)	83%	17%	(100)
Los Angeles*	77%	18%	(44)	85%	28%	(54)
Newark*	88%	26%	(78)	92%	25%	(120)
St. Louis	76%	20%	(59)	72%	20%	(83)
Washington, D.C.	81%	17%	(76)	89%	20%	(65)

*Most Pro-Active Departments

populations arrested by the different methods occur in Atlanta -- a very large increase in the fraction of minorities arrested in on-view situation compared with complaint situations -- and in Los Angeles -- a very large increase in the fraction of cases involving youth. Atlanta is the least proactive department, and Los Angeles is one of the most. Table 11 reveals the pattern: while there is a tendency for proactive arrests to involve a more minority and youthful population, a shift in arrest practices toward proactive methods need not be accompanied by dramatic changes in the characteristics of those arrested. Obviously, recorded arrests for weapons offenses need not reflect the incidence of stops and searches, and we may be as concerned with the stops as with the arrests. But still, these data suggest that the police and the community may have fairly consistent views about where the problem of weapons enforcement lies and that a department can shift to a proactive enforcement effort against weapons without dramatically changing the demographic pattern of those arrested from what the pattern would be if the department merely responded to complaints.

3. The Feasibility and Efficacy of Pro-Active Local Gun Enforcement

Whether it would be feasible or desirable to increase the level of local enforcement against guns remains unclear despite this analysis. On one hand, it does seem clear that generally increasing a police department's level of pro-activity will increase the volume of

Table 11

Shift in Focus on Minority and Youth
Associated with Pro-Activity

Pro-Active v. Re-Active Departments

	<u>% Increase in Minority Focus</u>	<u>% Increase in Youth Focus</u>
<u>Pro-Active Departments</u>		
Chicago	+ 10%	- 1%
Los Angeles	+ 8%	+ 10%
<u>Newark</u>	<u>+ 4%</u>	<u>- 1%</u>
Average	+ 7%	+ 3%
<u>Re-Active Departments</u>		
Atlanta	+ 14%	- 6%
St. Louis	- 4%	0%
<u>Washington, D.C.</u>	<u>+ 8%</u>	<u>+ 3%</u>
Average	+ 6%	- 1%

weapons arrests -- primarily in the categories of illegal carrying rather than illegal possession and use. Our experience with drug enforcement also suggests that administrative actions could increase the volume of activity directed against illegal possession and distribution. Some combination of special units, special tactics, special rewards for gun enforcement can influence the overall level of gun enforcement.

On the other hand, it takes legal tolerance and political enthusiasm to make the administrative changes that would stimulate and guide higher levels of gun enforcement. And for this, one needs some evidence that the approach could succeed in reducing violent crime, and could be managed in a decent non-intrusive, and non-discriminating way. Of course, one could argue about this question endlessly. But the right way to get the answer is to find some departments that are now doing a good job of gun enforcement, document how it is being done, and see what can be learned about its efficacy.

Until we experiment, or document the natural experiments in gun enforcement now occurring in the U.S., we will not know whether gun enforcement can reduce violent crime, or be done in a way that could comfortably withstand constitutional challenges. Consequently, one cannot reasonably now advocate stepped up local gun enforcement as a clearly effective policy for controlling crime. But it also seems clear that local enforcement of existing gun laws is the appropriate next-step to take in gun control policy. And if we are pessimistic

about this step, then we might just as well stop talking about gun control as an approach to the crime problem for no other gun control policy can plausibly work without state and local enforcement efforts.

IV. PROMISING EXPERIMENTS IN GUN ENFORCEMENT

As we have seen, the front for gun enforcement activity is broad and diverse. If our aim is to keep guns out of the hands of criminal offenders and off city streets we can attack at many different sectors of gun distribution, ownership and use. One potentially broad target is "sources of guns to criminal offenders." One might imagine that this sector consists largely of specialized "black markets" in guns, but analysis and empirical evidence indicate that sources of supply are more diverse than this. They include simple thefts of guns from legitimate owners, purchases from people who do not have licenses to deal in handguns but nonetheless transfer weapons, and even purchases from licensed dealers who are tricked by or collude with proscribed purchasers.

A second broad target to attack is illegal possession and use of guns. Federal law defines several broad classes of people who are prohibited from owning guns, but some empirical evidence indicates that the prohibited people often do possess and use guns. State laws have largely prohibited the carrying of weapons, but some empirical evidence suggests that such activities are commonplace not only in the general population, but also particularly in the population of convicted felons. So, there is a structure of criminal liability and

current patterns of conduct that invite more sustained gun enforcement activities.

Some bureaucratic capability also exists to mount more sustained and aggressive enforcement efforts. At the federal level, the Bureau of Alcohol, Tobacco and Firearms has responsibility for enforcing the varied provisions of the Federal Gun Control Act of 1968. Moreover, gun enforcement occupies a prominent role in their current conception of the mission or strategy of the organization. At the local level, over 400,000 officers are now employed in police departments that patrol city streets. These officers now make over 100,000 weapons arrests each year, but more than 500,000 narcotics arrests. Arguably, the weapons offenses are more closely related to the sorts of street crime for which they feel responsible than the drug offenses which are largely marijuana violations. Consequently, it might be possible to increase their level of activity in controlling the distribution, ownership and use of handguns.

What seems to be missing from both the federal and local enforcement efforts, however, is a clear sense of what they are trying to accomplish, and confidence that the objectives can be met. In addition, there is no tradition of gun enforcement to provide guidance to them in the absence of a planned strategy, and many reasons to be cautious about moving aggressively into the area. In this situation, the proper next steps to take involve deliberate thought and experimentation to build conceptions and a tradition of gun

enforcement. The aim of Part II of this paper was to begin the process of thinking about possible strategies of gun enforcement. The aim of Part III was to see how current efforts matched possible conceptions of gun enforcement strategies, and to calibrate how much room for experimentation existed among agencies that could be mobilized to the task of gun enforcement. The aim of this concluding section is to suggest broad priorities for experimentation, and some guidelines that should be followed.

Table 12 presents a matrix in which the columns define the potential targets of enforcement efforts designed to keep guns out of the hands of offenders and off city streets, and the rows define the organizations that could be assigned the task. The large boxes with numbers indicate the areas in which I judge experimentation to be most valuable, with the priority given by the number. The judgements are based on some combined estimates of the crime reduction value of the approaches; and their legal, political and bureaucratic feasibility. Four points seem to me to be particularly important.

First, in all likelihood, the state and local enforcement effort is going to be much more important than the federal. This is true largely because of the sheer scale of local enforcement capabilities, and because there is no specialized target that is very appropriate for federal enforcement action.

Second, among possible state and local activities (including regulatory efforts), the most interesting efforts are those that

TABLE 12

Priorities For Experimentation in
Gun Enforcement Efforts

	<u>Illegal Transfers</u>				<u>Illegal Possession and Use</u>	
	Licensed Dealers	Private Transfers	Thefts	Black Markets	Possession	Carrying
I. Federal						
A. Regulatory	2	5				
B. Criminal				6	7	
II. State & Local						
A. Regulatory						
B. Criminal			3		4	1

involve more enforcement against illegal carrying and possession. The reason is simply that these are natural extensions of current activity, and therefore plausibly within current capabilities; and further that they are plausibly linked to important criminal activity, particularly if they are focused on convicted felons.

Third, in somewhat more speculative vein, there might be room for some cities to increase their level of investigative activity directed against illegal dealers in guns. A piece of that effort might involve greater efforts against burglars and fences who seem often to have guns for sale; but another part might simply be undercover buy operations like those now conducted in drug markets to reduce the availability of drugs.

Fourth, the most interesting areas to investigate for ATF's operations are in the areas of tightening the current distribution system by enlarging instead of shrinking the universe of federally licensed dealers, and by designing a combined regulatory and criminal enforcement approach to the larger population of licensed dealers. Much less interesting than this is resumed federal efforts against illegal possessors of weapons, or strengthened attacks on interstate black markets. The first idea is uninteresting simply because of the limited scale of the federal agency. The second idea is uninteresting because it doesn't seem likely that large, durable gun dealing firms exists. Thus, both tasks might better be handled by an expanded local enforcement effort rather than by the federal government. The

distinctive competence of the federal government remains in extending and enforcing obligations on dealers to be circumspect in transferring their weapons.

These recommendations sound much different than the standard recommendations one might hear in the drug area. It is as though we were recommending indifference to large scale criminal dealers, and greater emphasis on illegal users of drugs, and doctors or pharmacists who might be supplying them rather than pushers. For this reason, the recommendations might seem strange. What justifies them, however, is the discovery that gun enforcement is not quite like drug enforcement. The front to be attacked is not simply dealers and users, and not only criminally motivated use. Instead, the front includes a heterogeneous groups of distributors, owners, and users who move easily from one category to another, and who sometimes have criminal motives and sometimes not. Given this difference, it should not be surprising that we come to different conclusions about the best places to search for plausibly effective enforcement strategies. It is a subtler and more exacting problem.