

Posted 2/7/16

BY HOOK OR BY CROOK (Part I)

In a last-ditch effort to stem gun violence, a frustrated Prez turns to executive action

By Julius (Jay) Wachtel. Sometimes it would be nice to be proven wrong. Back in '08, only days after the election, [we predicted](#) what then seemed obvious: that for the foreseeable future, gun control was indeed “dead”:

In this badly divided nation firearms have been a surrogate in a culture war that’s replayed every four years. When President-elect Obama criticized our tendency to “cling” to guns and religion he got it perfectly right. It was an amazingly insightful and honest comment that he will never repeat in public, and which he will never, ever try to express through meaningful gun control legislation.

According to the [Centers for Disease Control](#), there were 21175 gun suicides and 11208 gun homicides in 2013. More than five-hundred additional fatalities were caused by an accidental discharge. And while gun deaths are down from their peak during the crack-crazed decades of the eighties and early nineties, the toll remains by any measure deplorable. (The FBI [recently announced](#) that during the first six months of 2015 violent crime mostly increased, and in some geographical areas, significantly.) Yet, despite [widespread public support](#) for preventive measures such as extending background checks to cover private sales, Congress has rebuffed all attempts to intervene. Even after the [massacre](#) of fourteen innocent persons by a pair of assault-rifle toting domestic terrorists, legislators have steadfastly refused to consider bringing back the (admittedly [toothless](#)) assault weapons law.

With the Feds out of the picture, movement on gun control has been up to States and localities. Aside from a few isolated exceptions, they’ve addressed the carnage by [further deregulating gun acquisition and possession](#). What happened last year is instructive. In line with the “good guy with a gun” fiction, Kansas, Maine and Mississippi passed laws allowing concealed carry without a permit, while a host of other states, from Georgia to Texas, liberalized the issuance of concealed carry permits and expanded the places where guns could be covertly toted to include parks, schools and universities.

Last month the Prez said “enough.” Since Congress is unlikely to consider let alone pass gun control legislation during an election year, he turned to his sole remaining option: executive action. A detailed [press release](#) set out four objectives:

1. Keep guns out of the wrong hands through background checks
2. Make our communities safer from gun violence
3. Increase mental health treatment and reporting to the background check system
4. Shape the future of gun safety technology

Natch, “the Devil is in the details.” So let’s take it one goal at a time.

First, and most importantly, the proposal intends to “keep guns out of the wrong hands” by reducing the number of guns that are acquired *sans* background check. Under Federal law only licensed gun

dealers must run prospective buyers through a criminal record check. In most States it's perfectly legal for unlicensed persons whose activities don't amount to "dealing" to sell and trade guns, no reporting, record checks or other paperwork required. In effect, the only way to increase the proportion of vetted gun transfers is to bring more gun sellers into the fold of licensees:

Clarify that it doesn't matter where you conduct your business – from a store, at gun shows, or over the Internet: If you're in the business of selling firearms, you must get a license and conduct background checks...

What does it mean to be "in the business of selling firearms"? Pop a Dramamine(r), then check out what the [law](#) has to say:

18 USC 921 (a) (11) The term "dealer" means: (A) any person engaged in the business of selling firearms at wholesale or retail...

18 USC 921 (a) (21) The term "engaged in the business" means: (C) as applied to a dealer in firearms, as defined in section 921(a)(11)(A), a person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms, but such term shall not include a person who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his personal collection of firearms...

18 USC 921 (a) (22) The term "with the principal objective of livelihood and profit" means that the intent underlying the sale or disposition of firearms is predominantly one of obtaining livelihood and pecuniary gain, as opposed to other intents, such as improving or liquidating a personal firearms collection...

Unlicensed gun dealing is a [straight felony](#), punishable by up to five years imprisonment (18 USC 924 [a][1][D]). In your blogger's experience as an ATF agent and supervisor, it would be an understatement to say that the statute is sparingly applied. Given the hobbyist exception and absence of a numerical threshold, the wiggle room of just what it means to be a gun dealer makes agents reluctant to investigate and prosecutors loath to file unless firearm quantities are substantial and there is demonstrable harm. Evidence that an unlicensed suspect bought (or, even better, used confederates to buy) dozens of guns from licensed dealers or at gun shows, resold them, and that some were promptly recovered from evildoers by police would form an acceptable case. Anything much short of that is unlikely to be prosecuted.

That's not to say that viable cases are rare. Gun trafficking, as we've pointed out in the posts and articles referenced below, is a widespread problem. In locally-brewed schemes, street dealers use straw buyers to acquire guns for resale to thugs and underage persons. Often there is an interstate aspect. Trafficking rings patronize gun dealers in States with permissive laws (say, Arizona, which allows private persons to buy as many handguns as they wish, cash-and-carry) and resell guns, at great profit, in neighboring States with strict gun laws (say, California, which limits handgun purchases to one a month and has a ten-day waiting period.)

WWW.POLICEISSUES.COM

Trafficking schemes cause serious harm. Yet they are unlikely to be discouraged by the President's actions, which cannot alter the ambiguous definition of "being in the business." True enough, a core function of any law is to deter those who would be deterred, so jawboning might have some value. While real traffickers are unlikely to be scared straight, casual traders might cut back. Maybe a few more guns will go through normal channels and be subject to a record check. Maybe that will discourage some evildoers from getting a gun. Maybe.

Well, we've scoured the President's first objective. Part II will cover the three that remain. Check back soon!