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## ACQUISITIONS

**Do Federal Gun Traces Accurately Reflect Street Crime?****Small Fraction of Guns Selected for National Trace may not be Typical of Ordinary Crime Guns***By David B. Kopel*

In an average year, there are about 360,000 violent crimes committed with firearms. Of those 360,000 crimes, the federal Bureau of Alcohol, Tobacco and Firearms (BATF) is asked to trace about 5,600 crime guns (less than 2% of total crime guns).<sup>1</sup> There is little doubt that BATF traces have provided important information in the solution of individual crimes. Do the BATF traces also provide accurate information about the nature of armed crime in general?

BATF trace data is often used in the debate over restricting or banning firearms. In early 1989, when the concern over "assault weapons" was at its height, BATF gun trace data was used to provide an estimate about how frequently "assault weapons" were used in crime. In 1993, BATF trace data is used to estimate how many crime guns in jurisdictions such as New York and Washington, D.C. (with stern gun controls) come from jurisdictions such as Virginia (with more moderate controls).

To assess whether BATF traces offer reliable information about street crime in general, this Issue Paper first examines the issue of "assault weapon" use in violent crime. In the months following the publication of the BATF trace estimate, many city police departments published detailed reports showing how often "assault weapons" were

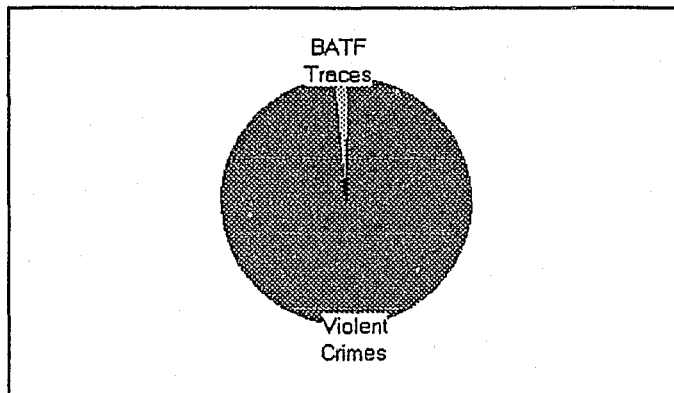
***In Brief:***

- *Less than 2% of the guns used in violent crime in a given year are traced by the federal Bureau of Alcohol, Tobacco and Firearms; eighty percent of the guns which BATF does trace are not connected to violent crime, but are traced for other reasons, including simple curiosity.*
- *BATF trace data was never intended to supply a snapshot of gun use in street crime, but some gun control advocates have used BATF trace information to make insupportable claims.*
- *Gun control advocates used to assert — based on BATF traces — that "assault weapons" constituted 10% of all crime guns. Those figures were proven wrong by analysis of actual crime gun seizures by police departments from New York to Los Angeles.*
- *Gun control advocates now implausibly insist that BATF traces prove that 41% of crime guns in New York City come from Virginia.*
- *But many states that are closer to New York than Virginia have weaker gun laws, raising questions about why gun-runners would make a long trip to Virginia.*
- *The trace data does not distinguish guns stolen from Virginia from guns legally bought there.*
- *Few of the Virginia "crime guns" found in New York were actually involved in a violent crime. The most common "crime" in which Virginia guns were involved may well be a violation of New York City's hyper-technical laws against handgun possession by ordinary citizens.*

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used in crime in the particular city. Thus, it is possible to compare the estimate of "assault weapon" use based on BATF traces with the actual police data based on analysis of every seized crime gun in various cities.

After analyzing the evidence regarding "assault weapons," the Issue Paper examines the BATF trace data regarding interstate gun-running, and discusses whether the use of trace data to estimate the number of crime guns in a particular jurisdiction which have come from another jurisdiction is likely to be accurate.



Less than 2% of the guns used in violent gun crime are traced by BATF.

### **"Assault Weapons": Police Data Shows BATF Traces to Overestimate Criminal use by 1000%**

In May 1989, two reporters from the Cox newspaper chain conducted a study of BATF firearms traces. The reporters found that for some crimes, "assault weapons" were involved in approximately 10% of the traces.<sup>2</sup> Since "assault weapons" constitute only about 1% of the total firearms stock, the 10% figure indicated that "assault weapons" were disproportionately involved in gun crime. Police data, however, showed the 10% figure to be false.

The Cox report gave trace percentages for both the nation as a whole (10%), and for selected major cities. The percentage of "assault weapons" reported by Cox newspapers, based on the BATF traces, was 10% for Chicago, 19% for Los Angeles, 11% for New York City, and 13% for New York City. In each of those cities, police departments conducted complete counts of all guns which had been seized from criminals (not just the guns for which the police department requested a BATF trace). According to the actual police department counts of crime guns in each city, the percentage of assault weapons were only 3% for Chicago, 1% for Los Angeles, 1% for New York City, and 0% for Washington, D.C.<sup>3</sup> Thus, when the BATF trace sample was compared with the comprehensive police gun seizure data, *BATF traces over-stated the percentage of assault weapons used in crime by over 1,000% for Los Angeles, New York, and Washington.*

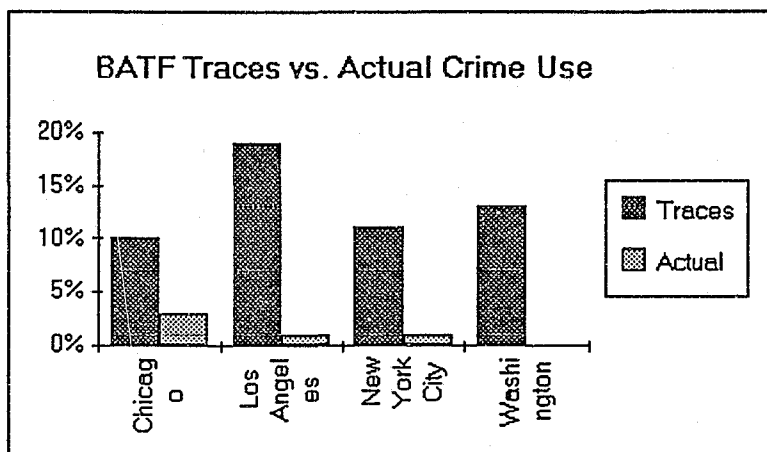
Why would the types of guns traced by BATF be so different from the types of guns actually used in crime? First of all, it was statistically likely that there would be a difference. The 2%

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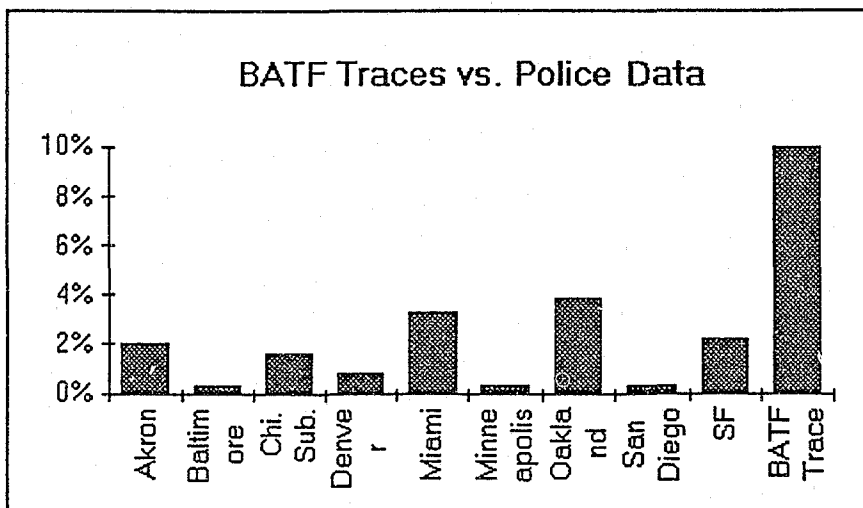
of guns selected for a trace request are not a random sample, but rather a select group chosen by local police departments. As basic statistics theory explains, a non-random sample of 2% is very unlikely to accurately represent the larger whole. A non-random sample becomes statistically valid only when 60% to 70% of the total relevant population is sampled. But the BATF traces, of course, are a non-random sample of only 2% of gun crimes.

In addition, there are a number of possible reasons why "assault weapons" would be more likely be selected for a trace request than other guns. Almost all "assault weapons" were manufactured after the Gun Control Act of 1968, and therefore have a serial number, and therefore can be traced. Many pre-1968 guns, having no serial number, are untraceable. Moreover, many "assault weapons" have an unusual appearance, which might pique curiosity (and hence a trace request) more than an old-fashioned, common crime gun such as Smith & Wesson .38 Special. The vast publicity surrounding "assault weapons" may also have increased police interest in the guns, and hence the likelihood that trace would be requested. And as the Congressional Research Service notes, "a law enforcement officer may initiate a trace request for any reason."<sup>4</sup>

It should be noted that the discrepancy between the BATF traces and the actual crime gun seizures was not confined to the four major cities discussed above. Researchers have now obtained comprehensive crime gun data for many cities, based on actual inventories of firearms seized by the police, and in not one of the cities does the percentage of "assault weapons" seized even remotely approach the BATF trace figure of 10%. (See graph on previous page.) Accordingly, it can only be concluded that BATF firearm trace requests are not an accurate mirror for actual firearm use in crime.



The small sample of BATF traces vastly overestimated the frequency of "assault weapon" use in crime, according to police data.



In every city for which data is available, "assault weapons" are used much less often in crime than BATF traces would suggest.

The actual gun data from cities throughout the country validate the *Congressional Research Services'* caution that the "firearms Bureau of Alcohol, Tobacco and Firearms selected for tracing cannot be considered representative of the larger universe of all firearms used by criminals or any subset of that universe," because "the firearms selected for tracing do not constitute a random sample." As a result "ATF tracing data could be potentially biased."<sup>5</sup>

### **Claims that 41% of New York Crime Guns Come from Virginia are Implausible**

In "Project Lead," the Bureau of Alcohol, Tobacco and Firearms has traced selected guns seized by the police in New York City and Washington, D.C. Again, the number of guns traced is a tiny percentage of the guns used in crime. For example, from January through September 1992, BATF traced 824 handguns seized in New York City. The traced guns amounted to about 6% of all the guns that had been seized from 13,382 crime scenes in the same period. In 1990, there were 13 769 guns seized by the New York City police, of which only about 1,126 (8%) were selected for tracing<sup>6</sup>

Some gun control advocates have attempted to make the selective trace of New York guns appear to be comprehensive, by asserting that BATF traced "all traceable guns." In fact, BATF traced all "traceable guns" only of the 8% of crime guns which it was asked to trace. Since most the remaining 92% were likely traceable (they contained a serial number which had not been filed off), the number of guns which actually were traced was far smaller than the number of guns which could have been traced.

In 1989, gun control advocates used BATF trace data to make misleading claims about the frequency with which "assault weapons" are used in crime. Analysis of comprehensive police data about crime guns disproved the exaggerated claims based on trace samples. In 1993, many of those same gun control advocates are using BATF trace data to claim that the Virginia supplies 41% of New York City's crime guns (sometimes a lesser figure, such as 25%, is claimed). Unfortunately, it is impossible to definitively verify or disprove the figure. Unless the New York City police disclosed the serial number of every gun seized by the police, it would be impossible for neutral researchers to determine the origins of New York City

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crime guns.

It is possible, however, to use common sense to conclude that the 41% figure is very unlikely to be accurate. To begin with, simplistic reliance on BATF traces has been demonstrated to vastly exaggerate the frequency of "assault weapon" use in crime. "Assault weapons," according to comprehensive police data, were only used by 1/10th as many criminals at the trace requests would indicate; the guns accounted for only 1% of crime guns, rather than 10%. Accordingly, it is entirely possible that, based on what prior studies of BATF traces have shown, Virginia guns may account for only 4% of New York City crime guns, rather than the asserted 41%. The BATF trace figure is no more likely to be an accurate depiction of the actual crime gun picture in New York City than a *Batman* comic book is to be an accurate depiction of the world of crime-fighting.

Common sense also suggests that a claim of 41% of New York City crime guns originating in Virginia is implausible. There are a large number of jurisdictions which are about as close to New York as Virginia is, and which have less intrusive gun control laws, including no instant background check. Those jurisdictions include Ohio, Vermont, West Virginia, New Hampshire, and Maine. In addition, Delaware has gun controls no more restrictive than Virginia's (both states have an instant check), and Delaware is considerably closer to New York than is Virginia. Indeed, New York counties outside the New York City region allow long guns to be bought over the counter, with no waiting period, and no background check. It is unrealistic to believe that so many New York gun-runners would travel farther than they need to, and to a state where gun laws and background checks are stricter than in closer states, to purchase crime guns. True, urban parts of Virginia may offer gun-runners an anonymity that rural Vermont does not, but Delaware; southern New Hampshire; Portland, Maine; much of Ohio; and upstate New York also have urban areas.

*"... New York's 'gun criminals' who own handguns under circumstances which would be entirely lawful in Virginia (possession of a handgun for home protection) are more likely to own a traceable handgun than are actual violent criminals."*

It is also important to note that the BATF trace reports do not indicate that a gun was used in a violent crime. *When the Congressional Research Service asked BATF about the connection between gun traces and gun crimes for "assault weapons," "The agency response noted that it is not possible to determine if traced firearms are related to criminal activity."*<sup>7</sup>

Since the simple ownership of a handgun by an honest citizen and first-degree murder by a

repeat offender are both considered "crimes" in New York City, it is necessary to consider what kind of New York City "crime" that Virginia guns may be involved in.

The statement that the New York guns which BATF traced were seized from a "crime scene" does not demonstrate that the guns were used in a violent crime. A "crime scene," by New York City definition, includes the *bodega* where a store-owner used his unlicensed handgun to scare away a robber, as well as the automobile where police found a handgun that a secretary was carrying for protection against car-jacking.

Nationally, nearly 80% of BATF gun traces do *not* involve guns used in violent crime; the traces are for technical violation of gun control laws, such as possession of a firearm without a license.<sup>8</sup> In New York City, obtaining a handgun license is very difficult. Although New York law requires that the police act on license applications within six months, delays of nearly a year are routine -- even for crime witnesses who being threatened by criminals out on bail. In addition, it is nearly impossible for an applicant to get a license to carry a handgun, unless the applicant is named "Donald Trump," in which case the carry permit will be granted in a few days.

*"...of the New York City firearms traced to Virginia during the first nine months of 1991, only 17% of the traces of Virginia guns related to a violent crime. The rest were associated with technical violations of New York City's arduous handgun licensing scheme, or other non-violent offenses."*

Because New York City is such a dangerous place, and because the police cannot offer adequate protection against crime, and because obtaining a handgun permit is very difficult for unwealthy persons who cannot afford lawyers, many citizens obtain handguns illegally; they adopt the adage that "it is better to be judged by twelve than to be carried by six." They would rather face the risk of prosecution for an unlicensed handgun than face the risk of living in New York City without a handgun. Non-criminal New York City residents are estimated to own over two million unlicensed handguns.

Much the same story can be told for Washington, D.C., where crime is even worse than New York City, where the police are notoriously ineffective, and where handgun purchases are entirely illegal.

Accordingly, the simple fact that some Virginia guns were found "at the crime scene" in New York (or Washington) does not indicate whether they were found in the hands of a violent

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criminals, or in the hands of a good citizen who owned an unlicensed gun for legitimate protection.

Indeed New York's "gun criminals" who own handguns under circumstances which would be entirely lawful in Virginia (possession of a handgun for home protection) are more likely to own a traceable handgun than are actual violent criminals. A person owning a handgun for home defense would have little reason to file off the serial number. But 60% of actual felons, according to the National Institute of Justice, consider a gun's untraceability to be "very important" and another 21% consider it to be "a little" or "somewhat" important.<sup>9</sup>

It may well be true that a large number of residents of Washington, D.C., and New York City have obtained unlicensed handguns for protection, and some of these fearful citizens have been caught, and their guns have been traced back to a Virginia purchase. The fact does not prove that Virginia guns are being used in violent crime in New York or Washington. The fact proves that Virginia guns are being used for legitimate protection in cities which have attempted to outlaw self-defense.

In fact, of the New York City firearms traced to Virginia during the first nine months of 1991, only 32 guns (or 17% of the traces) of Virginia guns related to a violent crime. The rest were associated with technical violations of New York City's arduous handgun licensing scheme, or other non-violent offenses. Forty-seven percent of the violations involved weapons possession crimes (including as simple possession of an unlicensed gun in the home); 35% involved other non-violent offenses (such as possessing a handgun and a gram of cocaine in the same apartment).

One final factor suggesting caution in leaping from the Project Lead trace information to possibly unjustified conclusions about Virginia gun-running: The "Virginia" guns identified by Project Lead likely included guns which had been stolen from, rather than purchased in a gun store, and which had found their way through the black market to New York City. *Project Lead does not attempt to determine if a Virginia gun found in New York had been stolen from a Virginian, and then transported to New York.*<sup>10</sup>



## Conclusion

Less than 2% of guns involved in violent crime are traced by the Bureau of Alcohol, Tobacco and Firearms, and more than 80% of BATF gun traces do not involve guns thought to be connected to a violent crime. Traces may occur for any reason, including simple curiosity, as well as alleged violation of hyper-technical gun control regulations such as those in New York City. Accordingly, BATF gun traces have no particular relation to the pattern of gun use in violent crime. In fact, analysis of city-by-city police data regarding the actual use of "assault weapons" in crime showed that BATF traces vastly over-estimated the frequency of the criminal use of such guns. Gun control advocates who made the simplistic claim in 1989 that BATF trace data "proved" that "assault weapons" were frequently used in crime misled the public.

Today, many of those same gun control advocates claim that BATF trace data "proves" that Virginia is the source of 41% of New York City crime guns. There is no reason to believe the 1993 claims any more than the 1989 claims which were proven false. The BATF traces only involved about 6-8% of New York City crime guns. Only 32 guns traced to Virginia (17% of all Virginia traces) were thought to be involved in violent crimes; far more Virginia "crime" guns in New York City simply involve non-violent offenses, including technical violations of the City's draconian laws against simple possession of a handgun. And since BATF did not attempt to determine if Virginia guns in New York City had been stolen from Virginia, it is impossible to use the BATF trace data to conclude that gun-runners from Virginia supply a large percentage of New York City's violent crime guns.

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TOM TANCREDO is President of the Institute.

## Endnotes

1. BATF 1990 report, cited in Gary Kleck, *Point Blank* (New York: Aldine, 1991), p. 75.
2. Cox Newspapers, *Firepower: Assault Weapons in America* (Washington, D.C.: Cox Enterprises, 1989) (pamphlet reprinting a series of newspaper articles).
3. Kleck, p. 75. To many people, it may seem surprising that the use of "assault weapons" in Washington, D.C. is so low. It should be noted that since Washington, D.C. passed its "assault weapon" liability law in 1990 allowing anyone in Washington (even a criminal) injured by an "assault weapon" to sue the manufacturer, not a single suit has been brought.
4. Congressional Research Service (CRS), Report 92-434, p. 66.
5. Congressional Research Service, p. 65.
6. Project Lead, BATF, memorandum to Special Agent in Charge, New York Field Division, June 16, 1992, p. 1.
7. Congressional Research Service, p. 66.
8. Of BATF's 35,100 traces in 1987, only 5,600 of the traces were related to violent crimes. BATF 1990, cited in Kleck, p. 75.
9. James D. Wright & Peter Rossi, *Armed and Considered Dangerous: A Survey of Felons and Their Firearms* (New York: Aldine de Gruyter, 1986), pp. 10-11.
10. BATF, *Firearms & Explosives Training Guidebook* (Nov. 1988), pp. 12-13.