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BY HOOK OR BY CROOK (Part II)

Smart enforcement could “make communities safer” even if new laws are out of reach

By Julius (Jay) Wachtel. In January the President announced he was taking executive action to stem gun violence. His plan has four objectives. First and most importantly, guns will be kept from falling into the wrong hands by increasing the proportion of transfers that go through licensed dealers, which, unlike casual “traders,” must perform background checks. Still, the ambiguous legal definition of “dealing” in firearms won’t change. ATF will reportedly distribute brochures at gun shows setting out its interpretation of the law. We felt that while some traders might reduce their volume or stop altogether, vague threats are unlikely to have much effect on gun trafficking.

This week we’ll take a closer look at the President’s remaining objectives:

- Make our communities safer from gun violence
- Increase mental health treatment and reporting to the background check system
- Shape the future of gun safety technology

To make communities safer President Obama proposed increasing ATF’s ranks by two-hundred special agents and investigators in his FY 2017 budget. It’s a modest increase, as ATF’s ranks included about 2,490 special agents and 780 licensee investigators in FY 2014. Still, two-hundred is better than no-hundred. Say that ATF’s ranks really *do* increase. How would it get the biggest bang for the taxpayer’s buck? In line with the President’s first goal, it could turn up the heat on unlicensed gun sellers. But there’s a better approach. ATF operates projects around the U.S. that trace guns recovered by police to their first retail dealer. As we’ve reported on at length, applying indicators of trafficking; for example, quantity purchases, brief lag before recovery, and sale and recovery in different States, has led to many significant cases. It’s a politically savvy approach, as objections usually vanish when it’s pointed out that agents only intervened after police seized guns on the street.

Could an expanded recovery-based investigative approach help make communities safer? A program conducted in Southern California during 1992-1995 yielded 28 criminal cases, with diversions ranging all the way to more than *three-thousand* guns.

Last week a Kansas man was served with a restraining order at the industrial plant where he worked. According to his former girlfriend, Cedric Ford, 38, was “an alcoholic, violent, depressed, it’s my belief he is in desperate need of medical and psychological help!” Ford abruptly left work, then returned with an assault rifle. He opened fire, killing three and wounding fourteen others before a police officer shot him dead.

Ford’s rampage is the most recent of a seemingly never-ending stream of mass shootings. Three years ago “60 Minutes” aired an episode about such events. Most of the gunmen – and they always seem to be

men – had serious mental problems. In late 2014, after a massacre by a mentally disturbed 22-year old who [killed six and wounded fourteen](#) near a university campus, California enacted a statute that empowered police and family members [to obtain a restraining order](#) against someone thought to be a threat, barring their possession of firearms for twenty-one days. But under Federal law, even a diagnosis of mental illness is insufficient to bar the purchase or possession of a firearm:

18 USC 922(g)(4): It shall be unlawful for any person who has been *adjudicated as a mental defective* or who has been *committed to a mental institution* to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce. (Emphasis ours)

[According to ATF](#), “adjudicated” means a formal finding by a “court, board, commission or other lawful authority” that a person’s mental condition makes them a danger to themselves or others or renders them unable to manage their own affairs.

Adjudicated mental defectives are supposed to be flagged in the gun background check system maintained by the FBI. In many States [that happens infrequently](#), inconsistently, or not at all. On April 16, 2007 Sung Hui-Cho shot and killed 32 persons and wounded 17 with two pistols that he bought at gun stores. Cho was previously ruled mentally ill by a judge, but [Virginia never flagged him](#) in the database. President Obama’s executive order seeks to remedy such lapses, in part by [addressing privacy laws](#) that dissuade jurisdictions from reporting their adjudicated mentally ill. In addition, the Prez would have Social Security report beneficiaries who are mentally unqualified to acquire and possess firearms.

Perhaps surprisingly, not everyone shares these concerns. Advocates for the mentally ill worry that new gun possession rules might unfairly stigmatize persons with mental problems. Their views are reflected in [an academic paper](#) posted on the National Institutes of Health website, which characterizes mass shootings as “anecdotal distortions of, rather than representations of, the actions of ‘mentally ill’ people as an aggregate group”:

Our brief review suggests that connections between mental illness and gun violence are less causal and more complex than current US public opinion and legislative action allow...That is to say, gun violence in all its forms has a social context, and that context is not something that “mental illness” can describe nor that mental health practitioners can be expected to address in isolation.

Then there’s Congress. On the one hand, one day after the San Bernardino massacre, Rep. Paul Ryan (R-Wis.) agreed that “people with mental illness are getting guns and committing these mass shootings.” On the other, [he instantly rejected calls for toughening background checks](#). He even swatted away a move that would have flagged persons on no-fly lists, suggesting it violated due process. Legislative proposals in both areas [were simultaneously rejected](#) in the Senate.

Finally, President Obama directed the Government to “conduct or sponsor research into gun safety technology that would reduce the frequency of accidental discharge or unauthorized use of firearms, and

improve the tracing of lost or stolen guns.” He is in effect plugging so-called “smart” or “personalized” guns, which, like the ideal pooch, respond only to commands from their owners.

There are several ways to personalize guns. Radio-frequency chips enable locked firing mechanisms when they receive a coded signal from, say, a wrist band. Unlocking can also be accomplished biometrically; for example, by scanning one’s palm or fingertips. A more sophisticated technique involves measuring one’s grip. And so on. Proponents see the benefits as obvious. Stolen smart guns can’t be readily reused. Cops, householders and CCW permittees can’t be shot with their own weapons. Children can’t misuse family guns. And so on.

But technology is tricky. Firearms are, first and foremost, mechanical contraptions. Recognition and blocking mechanisms would have to endure the phenomenal forces generated by the firing process. Smart guns used for self-defense or by police would have to correctly identify their authorized users and function perfectly even during physical combat, like rolling around on the ground. Even if such perfection is realized, gaining measurable benefits would require that we convince ordinary gun owners to trade in their toys. Unless the Prez wields a cudgel far more substantial than an executive order, that seems pretty far-fetched.

This brings us to the blessed end of the second (and final) part of this series. In Part I we suggested that pressuring casual gun traders to get licensed or stop selling guns would have little effect on gun misuse. Here we found a little more to cheer. Expanding ATF’s ranks could be a positive move, especially if additional resources are devoted to combatting firearms trafficking. Tightening restrictions on gun possession by the mentally ill could also be worthwhile. Alas, to be effective it would require passing new gun laws, a practical impossibility at the Federal level. As for “smart guns,” they seem at best a fanciful distraction.

Meanwhile, the carnage continues.