

Should Gun Shows Be Outlawed?

McCain bill does much more than impose background checks

By David B. [Kopel](#) & Alan [Korwin](#)

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I. The Poison Pills Hidden in McCain-Lieberman

Senator John McCain argues that his gun show bill with Senator Lieberman, [S.890](#), is a narrowly focused, single-purpose effort to close the so-called "gun show loophole." Such a law would be very simple to write. For example, in 2000, Colorado voters approved a short initiative which:

1. Defined gun shows.
2. Required background checks on all gun sales at gun shows.

The whole law needed only a few paragraphs.(Colorado Revised Statutes, Title 12, Article 26.1.)

In contrast, the McCain-Lieberman bill consumes many pages. Within these pages are numerous complications and loopholes, which give federal officials the ability to shut down gun shows entirely, to register people who attend gun shows, and to impose many other gun controls which have nothing to do with background checks on purchases. In short, a "gun show loophole" bill could be short indeed; McCain-Lieberman is long because its hidden agenda is so long.

A. No Gun Shows without a License, and No Timetable for Licenses to Be Issued

As the Colorado law demonstrates, a "gun show loophole" bill does not require any new licensing laws. In Colorado, gun show operators do not need to obtain a special license. This makes sense, since gun show operators simply rent table space to the people who actually sell firearms.

McCain-Lieberman, on the other hand, makes it illegal -- with a criminal penalty of up to five years -- to operate a gun show without a special new federal license. When must the license be issued? There is no deadline. Although proposed 18 U.S. Code sec. 931(d)(1) says that "The Secretary (of the Treasury) shall issue a special firearms event license," it does not say when. If a person applies for a license to hold a gun show six months hence, BATF could choose to delay issuing the license until a few days before the gun show -- by which time it would be impossible for the operator to make the arrangements to actually hold the show. Or BATF could claim that budgetary constraints make it impossible to issue the licenses unless the application were filed over a year in advance. Or BATF could take a leaf from the way the New York City Police Department used to "issue" handgun licenses -- and simply put the license applications in a "to do" stack which would never be acted on. Federal law requires BATF to publish every year a volume of state and local gun laws, so that federally licensed firearms dealers can better comply with the law. [18 U.S.C. [921](#)(a)(19).] Yet many years, the BATF fails to publish this required book. If the BATF will not even obey this simple statute, is it plausible to fear that the BATF -- especially when pressured by an anti-gun White House -- might fail to issue gun show operator licenses?

In response to abusive license enforcement in New York City, the New York state legislature enacted a statute requiring the NYPD to issue or deny handgun licenses within six months. (N.Y. Penal Law art. 404-a.) In response to abusive gun dealer license enforcement by the Bureau of Alcohol, Tobacco and Firearms, Congress enacted a statute requiring that gun dealer licenses (Federal Firearms Licenses) must be issued or denied within 60 days, and that the license application may only be denied for a particular list of reasons. (18 U.S. Code sect. [923](#)(e)&(f).) This basic due process protection is conspicuously absent from McCain-Lieberman. It would have been very easy for the drafter of McCain-Lieberman to require that gun show operator licenses must be issued with the same due process protections as federal gun

dealer licenses. The omission of such an obvious and important protection against abuse reveals much about the agenda underlying McCain-Lieberman.

B. All Attendees Must be Registered

Anti-gun groups such as the Brady Campaign (formerly known as Handgun Control, Inc., and before that, the National Council to Control Handguns) have proposed that all gun owners should be registered with the government. Most gun control supporters have also acknowledged the political difficulty in imposing universal registration all at once; accordingly, incremental proposals to register more and more gun owners have been used. McCain-Lieberman effectively requires registration of all people who *attenda* gun show. Again, such registration is not a genuine requirement of a "gun show loophole" law; the Colorado gun show law does not require any new form of registration of anyone.

How does McCain-Lieberman impose registration? Suppose that a man who is attending a gun show runs into a friend from his shooting club. The men chat for a while. Then, the first man says, "Would you be interested in buying that old Remington I've got? I hardly shoot it any more. You could come by my house in a couple weeks, and check it out."

The second man replies, "Well, maybe, but I'm a little short on cash right now. Let me think about it." The second man never follows up, and the gun is never sold.

Under McCain-Lieberman, both the gun show operator and the first man can be sent to prison because of the sales offer. Under S. 890, any person at a gun show who merely *offersto* sell a gun is a "special firearms event vendor" -- regardless of whether a sale ever takes place, and regardless of whether the gun is even present at the gun show, and specifically including people who did not rent a sales table at the gun show:

"The term 'special firearms event vendor' means any person who is not required to be licensed under section 923, who exhibits, sells, offers for sale, transfers, or exchanges 1 or more firearms at a special firearms event, regardless of whether or not the person arranges with the special firearms event promoter for a fixed location from which to exhibit, sell, offer for sale, transfer, or exchange 1 or more firearms." (Sec. 102, proposed 18 U.S.C 921(a)(39).

An individual's sale of a personal firearm is excluded from the definition of a "special firearms event" only when the offer of sale is made "at the private residence of that individual." (Sec. 102, proposed 18 U.S.C. 921(a)(35).

No operator is going to run a gun show exposed to a two-year prison term anytime two customers at a show chat about a gun transaction.

Under McCain-Lieberman, every gun show vendor must be registered with the federal government. To protect against being sent to prison because of a

personal transaction (or a mere offer for a transaction) between two attendees, the only way a gun show operator can safely run a show, is to pre-register everyone in attendance *as a vendor*.

A gun show operator is subject to two years imprisonment unless the operator "verifies the identity of each special firearms event vendor participating in the special firearms event by examining a valid identification document. (Sec. 103(b)(7)(a)(1)(I), proposed addition to 18 U.S.C. 924(a).) The vendor (meaning anyone who might offer to sell a gun to someone they meet at the show) must sign "a ledger with identifying information." (Sec. 103, proposed 18 U.S.C. 931(a)(2)(E)(i).) The ledger must be sent to the Secretary of the Treasury within five days of the close of the gun show. (Sec. 103, proposed 18 U.S.C. 931(a)(2)(G).)

Americans for Gun Safety argues that gun show operators would not be criminally liable in the scenario described above, because the law requires "intentional" violations for a criminal conviction. ("Show Operators Fear Worst If Law Passes," *Firearms Business*, July 15, 2001.) This statement reveals a misunderstanding of the actual language of the McCain bill. A prosecutor does not have to prove that a gun show operator deliberately allowed the legal violation -- that the operator let the attendee come to the show because the operator wanted the attendee to sell an illegal gun. Rather, the prosecutor need only prove that the operator was acting "knowingly"-- that is, the operator was conscious of his own actions; the operator (or his employees) *knew* that the person was being admitted to the show, and the operator or his employees *knew* that the person was not being registered. Federal criminal law, including federal gun law, is full of cases where businessmen have been criminally prosecuted not because they wanted a crime to occur, but because they knowingly created conditions (e.g., admitted unregistered attendees) wherein a crime could occur.

C. Even Book and Clothing Vendors Must be Registered, and Individual Books Can be Registered

Thirty days before the show commences, the gun show operator must give 30-day notice to the Secretary of the Treasury, of all "the vendors planning to participate." (Sec. 103, proposed 18 U.S.C. 931(a)(2)(B)). This is *not* limited to "special firearms event vendors." The thirty-day advance registration applies to *all* vendors -- including many vendors at gun shows who sell books, clothing, knives, food, candy, ammunition, and safes.

Notably, the Secretary of the Treasury can require the gun show operator to supply "any other information concerning the special firearms event as the Secretary may require by regulation." Thus, the federal government could require a list of every book that might be offered for sale at the gun show. Similarly, the government could require an advance copy of all political literature that would be distributed at the gun show. Or the government

might ask only for listing of potentially "dangerous" materials -- such as books about how to hide guns, or political literature which might be at risk of violating campaign finance laws (such as the McCain-Feingold proposed restrictions on criticizing federal office-holders within 60 days of an election). Or the government might leave First Amendment materials alone, and demand listings for every knife, or every box of ammunition, or other items offered for sale.

D. Limitless Regulations and Registration Can Be Imposed

Repeated throughout the bill are references to "in accordance with regulations the Secretary shall prescribe" or similar language. These regulations will not be created until after the passage of the law. Gun show operators and vendors would have to supply "any other information" required by BATF regulations. This "any other information" could include the type of gun sold, the gun's serial numbers, the buyer's social security number -- or a list of every other gun owned by the buyer or the seller. "Any other information" can be as broad as a future BATF administrator wants it to be.

All of the new licenses and reports must be filed with the Treasury Department. (Proposed new 18 U.S.C. 931(a),(c)(4),(d)(1), (d)(4).) In practice this would be delegated to the Bureau of Alcohol, Tobacco and Firearms. Some of the record-keeping involves records the show operators must maintain. The federal government is granted unqualified access to these records. A gun show operator (who doesn't even sell guns) is granted far less protection than an actual federally-licensed firearms dealer (FFL). The firearms dealer must register his customers once, at the time of sale, when he fills out the federal Form 4473, which the dealer retains on file. In contrast, the gun show operator must register his customers three times (30 days before the show, 72 hours before the show, and then five days after the show); the gun show operator must send the registration forms to the Treasury Department. The FFL's license is good for three years; the gun show operator license is good for only a year. Once the FFL has the license, he can conduct business every day without further licensing; the gun show operator must obtain a permit every time he wishes to conduct a show.

Other McCain-Lieberman records are to be centrally recorded ("submits to the Secretary a copy of the ledger" or "notifies the Secretary of the date, time, duration, and location of the special firearms event, the vendors planning to participate" and similar requirements).

Even the attendee notice must be submitted to the federal government within five days of the end of the show. (Sec. 103, proposed 18 U.S.C. 931(a)(2)(G).) Show organizers must also keep their own copies of materials submitted to the Treasury, under regulations that are not yet known. Current federal law forbids BATF from creating a centralized registry of gun owners. (18 U.S.C. sec. [926](#).) But McCain-Lieberman would allow BATF to create

centralized registries of every private gun owner who has once rented a table at a gun show, book and equipment vendors who rent tables at gun shows, and people who attend gun shows. This registry would not contain every American gun owner, but would contain a very large fraction of active firearms hobbyists.

By specifically authorizing extensive regulations for open-ended records-gathering, S. 890 allows the collection of extensive personal information about people who attend or conduct business at gun shows. The only limit is the curiosity of the Treasury Department or anyone whom the Treasury Department wants to please.

E. Are We Certain the No-one Will Abuse These Vast Powers?

Off the record, some proponents of McCain-Lieberman acknowledge that the vast powers contained in the bill could be used to shut down or severely constrain gun shows. But the proponents assert that there is no intent for the new powers to be abused; their intent is simply to impose background checks at gun shows.

If the intent is truly benign, then the 3,900 words of McCain-Lieberman could be replaced with a much shorter bill, not containing the provisions which could so easily be abused. Senator McCain and Senator Lieberman may have no specific personal intent for the bill to be enforced as aggressively as the bill's text would allow. But Senators will not be the ones who enforce the bill. It is unlikely that all future Presidents will be as conscientious about Second Amendment rights as is President Bush. Enforcement will be in the hands of the Bureau of Alcohol, Tobacco and Firearms, subject to intense political pressures from an administration which could oppose the very existence of Second Amendment rights, as the Clinton administration did.

In 1986, large bipartisan majorities in Congress enacted the Firearms Owners' Protection Act, in response to [extensive well-documented evidence of abusive BATF enforcement](#) of the Gun Control Act of 1968. In the late 1980s and early 1990s, Congress consistently refused to pass "assault weapon" legislation because Congress refused to give BATF the power to add to the list of banned guns. Only when BATF power to ban additional guns was removed did a ban on a specific list of guns narrowly pass Congress. Yet three years later, BATF greatly expanded the scope of the ban by massively expanding the number of firearms banned from import -- despite explicit administration promises to Congress that the 1994 law would be the end of the administration's push for gun control. History offers not the slightest reason to believe that all the powers granted by McCain-Lieberman will not eventually be used to their fullest extent -- and even pushed beyond the statutory language.

In sum, McCain-Lieberman is much, much more than a "gun show loophole" bill. It is a gun owner registration and gun show prohibition law, at least in the hands of any administration that wants to make it so.

F. Enact the Colorado Statute?

Plainly, if the objective is to impose additional background checks at gun shows, the simple Colorado statute could be used as a model. To contrast the immense length of McCain-Lieberman with the simplicity of the Colorado statute is to begin to recognize that McCain-Lieberman is mostly a collection of poison pills allowing gun shows to be abolished directly, or to become so tied up in red tape and so legally perilous that no-one will want to operate gun shows any more.

The Colorado statute, while admirable in its simplicity, was also written with a hidden agenda -- in that the statute covers much more than gun shows. According to the Colorado statute, a "gun show" takes place whenever there are three or more gun owners, or more than 25 guns. In other words, if Grandpa opens up his gun safe containing 28 guns, and tells his grandson "pick one," that gift is a "gun show" and Grandpa commits a crime by not getting a background check on his grandson. Similarly, if four men go on a hunting trip together, and decide to trade shotguns for the duration of the trip, that too is a "gun show," and all four hunters become criminals by having failed to get background checks on each other.

When these problems were pointed out during the 2000 election, Denver District Attorney Bill Ritter (a leading proponent of the gun show initiative) promised that he would never enforce the statute as written. He would direct his enforcement attention exclusively to genuine gun shows. The District Attorney's good judgment deserves commendation, but no-one can guarantee that all future prosecutors will have similarly good judgment. Accordingly, the definition of "gun show" should be changed so as to conform to the size of real gun shows -- perhaps events involving 100 more people, or having 200 or more guns displayed for sale. Additionally, the definition should state that a "gun show" includes only places open to the public primarily for commercial purposes involving the sale of firearms.

As modified to include only true gun shows, the Colorado statute would accomplish everything that Senator McCain claims he is trying to accomplish. Once we have set aside the poison pills in McCain-Lieberman, we can begin to consider the merits of what Senator McCain says he wants. The next sections address the Senator's stated concerns -- including terrorism, the existence of a gun show "loophole," and the connection between gun shows and crime guns.

II. Terrorism

Since September 11, a number of anti-gun organizations have attempted to paint gun show restrictions as connected to the war on terrorism. Mrs. Sarah Brady frantically warns, "Incredibly, our soldiers could be gunned down by foreign terrorists armed with firearms purchased at American gun shows." Fortunately, the situation is much less dire than the anti-gun groups warn. Indeed, two of the three "terrorist" cases they point to do not even have terrorists in them.

Last year, four people, including Conor Claxton, were convicted of buying guns at Florida gun shows, and illegally smuggling them to Ireland. Prosecutors alleged that one of them, Conor Claxton, was buying the guns for the Irish Republican Army. Claxton *was* convicted of gun smuggling, but *not* of supplying guns to terrorists. The case counts as an incident of gun shows being used to supply terrorists only if one deliberately ignores the jury's findings of fact.

A second "gun show terrorist" case also may not have any terrorists in it. On October 30, 2001, federal prosecutors secured a guilty plea for immigration law violations by Muhammad Navid Asrar, an illegal alien from Pakistan. While illegally living in Texas, Asrar purchased several firearms at gun shows. In federal court, Asrar pleaded guilty to illegal possession of ammunition, since [it is illegal for illegal aliens to possess firearms or ammunition](#). A federal grand jury is currently investigating whether Asrar has any ties with terrorists. So far, no one in the government has claimed that he does.

A third case does involve a real terrorist. According to the *Middle East Intelligence Bulletin* of [November 17, 2000](#):

"An FBI terrorism task force arrested a Lebanese resident of Detroit allegedly involved in shipping weapons and ammunition to Hezbollah guerrillas. Ali Boumelhem, 35, was apprehended just before departing on a scheduled trip to Lebanon. Authorities say that Boumelhem, a leader in the militant Amal militia and a 'sympathizer' of Hezbollah, traveled frequently to gun shows to buy arms and then hid them in cargo crates bound for Lebanon. FBI agents intercepted one cargo container bound for Lebanon which contained a pair of shotguns, hundreds of rounds of ammunition, a radio and a police scanner. In addition, an FBI informant told investigators that he had seen Boumelhem in Beirut unloading shipments of automatic weapons, explosives, grenades and rocket launchers. He faces charges in a U.S. District Court of shipping firearms to a nonlicensed person."

On September 10, 2001, Boumelhem was convicted by a Detroit jury of federal weapons charges. Shotguns and ammunition are indeed the kinds of products which one can buy at a gun show. "Automatic weapons, explosives, grenades and rocket launchers" are certainly not. Thus, it appears that Boumelhem had some source unrelated to gun shows from which he obtained very powerful weapons.

Is the Boumelhem case sufficient to mandate imposing new federal laws on gun shows -- assuming that one did not favor such laws anyway? That is, should anyone who did not favor the McCain bill before Boumelhem was convicted change her mind? If so, one should also favor federal background checks on all people who buy radios and police scanners, since Boumelhem bought those in the United States without having to pass a background check.

But would background checks really help? Even before Boumelhem began his arms acquisition spree he was a convicted felon, so it was illegal for him to acquire or possess firearms or ammunition. Yet like most convicted felons, he knew someone who could make purchases legally: his brother. Boumelhem brought his brother to gun shows, to make "straw purchases." Background checks can't stop straw purchases, since the straw purchaser (the surrogate for the real buyer) is chosen because he has a clean record.

Currently, stringent federal background checks are already required for the acquisition of automatic weapons, explosives, grenades, and rocket launchers -- yet Boumelhem was apparently able to obtain those. Given that Boumelhem acquired police scanners (no background check) and rocket launchers (virtually impossible to buy legally, even after a very strict background check), perhaps the lesson of the Boumelhem case has less to do with background checks on shotguns, and more to do with the necessity of strictly watching suspected terrorist sympathizers -- as federal agents commendably did with Boumelhem.

Indeed, the Boumelhem case is a good illustration of two contrasting approaches to anti-terrorist law enforcement. Because Boumelhem had a straw purchaser working for him, the McCain/Lieberman bill would have made absolutely no difference in his case. To use Boumelhem as a pretext for passing McCain/Lieberman is to engage in purely symbolic politics -- to pass legislation for the sake of appearance, even when the legislation is manifestly irrelevant to the very case which is proclaimed as the reason for passing the law. Such symbolism does for gun safety precisely what confiscating toenail clippers from airline pilots does for airplane safety: nothing. Indeed, such symbolism reduces the freedom of law-abiding people, and distracts the public and the government from genuinely substantive actions.

Instead of symbolic action like an "anti-Boumelhem" bill which wouldn't have stopped Boumelhem, the substantive approach to anti-terrorism is to increase resources for the kinds of program that *did* stop Boumelhem: law enforcement surveillance of suspected terrorists who come from countries which are known to tolerate or encourage terrorism.

III. There is no "Gun Show Loophole"

"Close the gun show loophole," demands the Brady Campaign. In fact, existing gun laws apply just as much to gun shows as they do to any other

place where guns are sold. Since 1938, most persons selling firearms commercially have been required to obtain a federal firearms license. The Gun Control Act of 1968 strengthened the 1938 requirement. Current federal law mandates that "No person shall engage in the business of...dealing in firearms...until he...has received a license to do so from the Secretary [of the Treasury]." [18 U.S.C. [923\(a\)](#).] The federal Gun Control Act specifically states that a licensed dealer must comply with all laws, including record keeping, when making a transfer at a gun show. [18 U.S.C.[923\(j\)](#).]

If a dealer sells a gun from a storefront, from a room in his home, or from a table at a gun show, the rules are exactly the same: he can get permission to sell the gun from the FBI or a state equivalent only after the government runs its "instant" background check (which often leads to false denials based on inadequate records).

Conversely, people who are not engaged in the business of selling firearms, but who sell firearms from time to time (such as a man who sells a hunting rifle to his brother-in-law), are not required to obtain the federal license required of gun dealers or to call the FBI before completing the sale.

Similarly, if a gun collector dies and his widow wants to sell the guns, she does not need a federal firearms license because she is just selling off inherited property and is not "engaged in the business." And if the widow doesn't want to sell her deceased husband's guns by taking out a classified ad in the newspaper, it is lawful for her to rent a table at a gun show and sell the entire collection. This is not a "gun show loophole"; it is simply a reflection of the fact that the federal government does not require record-keeping by occasional firearms sellers who are not "engaged in the business." It would make little sense to impose special restrictions when these people sell 1-2 guns a year at gun shows, while not imposing such restrictions when the sales take place in a home, at an office, etc.

And this is precisely what the anti-gun groups have stated as their goal: requiring government permission for any gun transfer, even when friends at a hunting club trade guns. This is what the groups have imposed as law in California and some other jurisdictions. [Cal. Penal Code sec. [12072\(d\)](#).] Whatever the merits of abolishing all privacy for the exercise of Second Amendment rights, the issue ought to be debated forthrightly; the issue should not be advanced under the thoroughly dishonest claim that there is a "gun show loophole."

If you walk along the aisles at any gun show, you will find that the overwhelming majority of guns offered for sale are from federally licensed dealers. Guns sold by private individuals (such as gun collectors getting rid of a gun or two over the weekend) are the distinct minority.

The Brady Campaign claims that "25-50 percent of the vendors at most gun shows are unlicensed dealers." That statistic is true only if one counts

vendors who are not selling guns (e.g., vendors who are selling books, clothing, or accessories) as "unlicensed dealers."

Now, suppose that someone claiming to be a gun collector is actually operating a firearms business. He rents a table at a gun show 50 weekends a year, and sells 20 guns each weekend. Selling firearms at the rate of 1,000 per year, and conducting a business week after week, he appears to be engaged in the business of selling firearms. If this man does not have a federal firearms license, then he is guilty of a federal felony. Indeed, every separate gun sale constitutes a separate federal felony. (The federal laws are sections [922](#) and [923](#) of Title 18 of the U.S. Code.)

In short, gun shows are no "loophole" in the federal laws. If a person is required by federal law to have a federal firearms license, then the requirement applies whether or not the person sells at a gun show. And if a person is not required to have a license, then the person's presence at a gun show does not change the law.

The gun prohibition lobbies express outrage that a person can buy a firearm at a gun show without going through the state background check, though this is only the case when the purchase is made from the minority of tables that do not have an FFL. However, even if the non-FFL gun collector sold his gun from his home rather than from a gun show, a federal background check still would not be required.

Why should the location of the sale determine whether a background investigation will be required?

IV. Are Gun Shows Really a Source of Crime Guns?

Denver Congresswoman Diana DeGette claimed that 70 percent of guns used in crimes come from gun shows. Arnie Grossman, head of the Colorado anti-gun group SAFE, which pushed the Colorado gun show initiative in 2000, told the *Denver Post* that "most guns used for criminal purposes are purchased at guns shows."

The true figure is rather different, according to federal government data, and other sources. The Bureau of Justice Statistics report [Firearms Use by Offenders](#) finds that only about 1 percent of U.S. crime guns come from gun shows. The BJS study was based on personal interviews with 18,000 prison inmates in 1997, and was the largest such study ever conducted by the federal government. Of course this figure includes *all* sales at gun shows, including sales by federal firearms licensees. (Since some future criminals have clean or expunged records, they could pass any background check.) The sources of criminal guns were:

- [Purchased from a retail store, 8.3 percent.
- [Purchased at a pawnshop, 3.8 percent.

- [Purchased at a flea market, 1.0 percent.
- [Purchased in a gun show, 0.7 percent.
- [Obtained from friends or family, 39.6 percent.
- [Got on the street/illegal source, 39.2 percent.

Combining "gun show" with "flea market", we get 1.7 percent. Notably, a much larger percentage of criminal guns -- 8.3 percent -- were "purchased from a retail store." Because all retail stores are federal firearms licensees, and therefore required to do the background checks on all customers, the significant number of criminal guns obtained from retail stores shows that many criminals may have clean records at the time they buy the gun. Or the criminals have surrogates with clean records who can buy the gun for them. Since we know that universal background checks cannot stop criminals obtaining guns from retail stores, it would be foolish to expect that wider background checks would stop that very small percentage of crime guns which come from gun shows.

The Bureau of Justice Statistics report from November 2001 was entirely consistent with previous federal studies. A June 2000 federal study, [*Federal Firearms Offenders, 1992-98*](#) found only 1.7 percent of federal prison inmates obtaining their gun from a gun show (plus 1.5 percent from a "flea market").

Similarly, a National Institute of Justice (NIJ) study, released in December 1997, reported less than 2 percent of criminal guns come from gun shows. ([*Homicide in Eight U.S. Cities*](#), page 99; the report covers much more than homicide.) The same study found that twenty-five percent of crime guns came from gun stores, even though FBI permission is required for every purchase from a gun store.

All these findings are consistent with a mid-1980s study for the NIJ, which investigated the gun purchase and use habits of convicted felons in 12 state prisons. The study (later published as the book [*Armed and Considered Dangerous*](#)) found that gun shows were such a minor source of criminal gun acquisition that they were not even worth reporting as a separate figure.

At the November 1999 meeting of the American Society of Criminology, a Michigan State University study of youthful offenders in Michigan reported that only 3 percent of the youths in the study had acquired their last handgun from a gun show. (Sean Varano, Tracy O'Connell, Todd Bietzel, Timothy Bynum, "Patterns in Gun Acquisition and Use by Incarcerated Youthful Offenders in Michigan.")

Again, even the tiny percentage of criminal guns acquired at gun shows (and the much larger figure for gun stores) does not mean that the criminal necessarily purchased the gun himself at that location. Many persons with criminal records use a "straw man" purchaser--someone with a clean record who buys the gun, and then transfers it to the criminal.

"Straw man" purchases have been prosecuted as federal felonies since the Gun Control Act of 1968; the federal law against straw purchases was strengthened in 1986 by the NRA-sponsored Firearms Owners' Protection Act.

According to the Brady Center (the legal/educational arm of the Brady Campaign), the group's own survey of major-city police chiefs found only 2 out of 48 who said that guns from gun shows (both "legal and illegal sales" according to the questionnaire) were a major problem in their cities.

At the command of the Clinton White House, the Bureau of Alcohol, Tobacco and Firearms produced a paper in early 1999 which said that 10 percent of gun *traces* (not crime guns) came from gun shows (including purchases made from licensed dealers, and purchases from private individuals). In contrast to the Department of Justice and scholarly studies -- which investigated real criminals and their guns -- that BATF report only looked at gun "traces." Tracing figures do not reveal anything about the types of guns used in crime. The Congressional Research Service has explained that the "firearms (which the) 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." (Keith Bea, "Assault Weapons": Military-Style Semiautomatic Firearms: Facts and Issues, Cong. Research Serv., Rep. No. 92-434, page 65 (1992).)

BATF gun traces reveal no meaningful information about gun use in crime; traces are initiated at the request of local police, and can be requested for all sorts of reasons (e.g., to aid the recovery of a stolen gun, for curiosity). Most BATF gun traces do *not* involve crime guns taken from violent criminals. (David B. Kopel, "[Clueless: The Misuse of BATF Firearms Tracing Data](#)," 1999 *Michigan State University Detroit College of Law Review* 171; David B. Kopel & Paul H. Blackman, "[Firearms Tracing Data from the Bureau of Alcohol, Tobacco and Firearms: An Occasionally Useful Law Enforcement Tool, but a Poor Research Tool](#)," 11 *Criminal Justice Policy Review* 44 (Mar 2000).)

"Who are you going to believe, me or your lyin' eyes?" Groucho Marx once asked. Direct research data show again and again that gun shows barely even register statistically as a source of crime guns. Thus, proponents of special new laws for gun shows are reduced to trolling for data not involving gun crime (such as BATF traces), and asking us to ignore the large body of evidence telling us exactly where crime guns come from.

Perhaps the most extreme example of inventing one's own data, rather than accepting the Department of Justice data, can be found in the Americans for Gun Safety (AGS) document [No Questions Asked](#). The document frantically

warns us that "States that DO NOT require background checks at gun shows are flooding the nation with crime guns."

What AGS does is take BATF tracing reports (which are fine for solving crimes, but not for figuring out broad policy questions) and then use those figures to conclude that states without special restrictions on gun shows are "flooding" other states with crime guns, compared to states with special gun show restrictions.

The obvious problem with these data is that they tell us nothing about gun shows. If a Texas gun is later traced by a BATF office in Oklahoma, we don't know if the Texas gun came to Oklahoma because a Texan moved to Oklahoma and took his guns with him, or because some criminals stole guns from a Dallas firearms dealer and sold them in Oklahoma City, or because someone bought them at a gun show in Houston and took them to Oklahoma, or any other reason. AGS's use of this jerry-rigged BATF tracing information appears to be a rather strong effort to distract attention from direct data about gun shows and crime: the numerous, large-scale federal government studies showing that gun shows -- far from "flooding" the nation with crime guns -- amount to barely a trickle.

What about the other charges against gun shows, such as Denver Congresswoman Diana DeGette's highly-publicized charge that gun shows allow illegal "assault weapon" sales? In fact, the 1994 Clinton "assault weapon" law bans the future manufacture of certain firearms based on cosmetic characteristics, such as whether the gun has a bayonet lug (as if criminals were conducting bayonet charges against convenience stores). The law imposes no controls on the pre-1994 supply of so-called "assault weapons." It is perfectly legal to own, buy, and sell these pre-1994 guns. It is legal for a licensed federal dealer to sell such guns from his store, or at a gun show; and it is just as lawful for a private individual to sell such guns.

V. Columbine and other Notorious Crimes

Several months before the Columbine massacre, the killers obtained firearms from two suppliers. The first was a 22-year-old Columbine High School graduate named Mark Manes (ironically, the son of a longtime Handgun Control, Inc., activist). Manes bought a pistol at a gun show and gave it to the two killers (who were under 18 at the time). Colorado law prohibits giving handguns to juveniles, with certain exceptions, and Manes is currently serving time for this offense in a Colorado prison. The second supplier was an 18-year-old fellow student at Columbine, Robyn Anderson, who bought three long guns for the killers at a Denver-area gun show in December 1998.

Both Manes and Anderson were lawful gun purchasers and could legally have bought the guns from a firearms dealer at a gun store, a gun show, or anywhere else.

Mark Manes committed a felony by obtaining a handgun for the young killers. He has never claimed that the existence of another law, regarding gun show sales, would have deterred him.

What about Robyn Anderson?

On June 4, 1999, *Good Morning America* presented a "kids and guns" program. Anderson was flown to Washington for the segment. The first part of the program discussed various proposals, including background checks on private sales at gun shows. Immediately after the introductory segment, Diane Sawyer introduced Robyn Anderson and asked:

"Anything you hear this morning [that would] have stopped you from accompanying them and help[ing] them buy the guns?" Anderson replied: "I guess if it had been illegal, if I had known that it was illegal, I wouldn't have gone." Half a year later, on January 26, 2000, Anderson began claiming that even if the purchase were legal, but there had been a background check of her entirely clean record, she would not have purchased the guns.

Whichever version is true, the facts show that Anderson was not afraid to divulge her identity when buying a gun for her wicked friends. When *Good Morning America* asked, "And they actually paid for the guns, or did you?" Anderson replied: "It was their money, yes. All I did was show a driver's license." (The private collectors asked to see a driver's license to verify that she was over 18.) Since Anderson did not mind revealing her identity to three separate sellers, is it realistic to believe that revealing her identity for an instant check would have stopped her? The Colorado instant background check does not keep permanent records on gun buyers, so even with background checks on private sales at gun shows, there would have been no permanent record of Anderson's purchase. And Anderson's new and improved talking points claim only that the prospect of a permanent record would have deterred her.

Putting aside Anderson's shifting stories, she is plainly an extremely irresponsible, selfish, and unreliable person. After the murders took place, she refused to come forward and help the police investigation. It took an anonymous tip for the police to find out about her. And in marked contrast to Mark Manes, Anderson has never apologized for her role in the Columbine murders.

Even if one accepts the version of Robyn Anderson's stories that is most supportive of gun control, no gun-show crackdown would have prevented Columbine. The older of the two killers could have bought his own guns in a store legally, since he turned 18 before the date of the attack on the school. Indeed, in a videotape made before the killings, the murderers said that if they had not obtained their guns the way they did, they would have found other ways. There is no reason to disbelieve them on this point.

The only law that would have some effect on Robyn Anderson and similar gun molls was introduced in the Colorado legislature in 2000 by Colorado State Representative Don Lee, whose district includes Columbine. His "Robyn Anderson Bill" now makes it a crime to give a long gun to a juvenile without the consent of his parents. This law covers Anderson's first version of her story, in which she told *Good Morning America* that the only deterrent for her would have been a law making her conduct illegal.

Whatever the other merits of proposals to impose special restrictions on gun shows, these would not have prevented Columbine, and it is cynical for their proponents to use Columbine as a pretext.

Unfortunately, anti-gun lobbyists have also attempted to falsely exploit other tragedies by making bogus claims about gun shows.

David Koresh's Branch Davidian organization often rented a table at gun shows, where they sold novelty items, such as empty grenade hulls and ready-to-eat meals (army-type survival foods). One of Koresh's devotees, Paul Fatta, was a licensed firearms dealer who sold firearms at gun shows in full compliance with federal laws. The major source of the Branch Davidian arsenal came from purchases through another licensed firearms dealer: Hewitt Handguns. Purchased in full compliance with federal laws, these guns were registered by the dealer on the 4473 forms, which were made available to BATF agents when they began the investigation of Koresh.

The federal firearms crimes which Koresh and his group allegedly committed--illegal manufacture of machine guns and explosives without registration--were conducted entirely in private. Gun shows had nothing to do with them.

VI. Stopping Firearms Acquisition by Law-Abiding Citizens--but not by Criminals

When the Brady Act was being pushed in Congress, proponents claimed that it would save thousands of lives. This extravagant claim turned out to be wildly wrong. The Brady Act had no effect on gun homicide, report Jens Ludwig and Philip Cook in August 2, 2000, issue of JAMA (the Journal of the American Medical Association). The only benefit the authors could find was a reduction in gun suicide (but not overall suicide) among persons over age 55.

More sophisticated research by Professor [John Lott](#) (formerly of Yale and the University of Chicago, now at the American Enterprise Institute) on the Brady Act is consistent with the JAMA study. (Lott controlled for variables such as law enforcement effectiveness, and the length of different state waiting periods, which the JAMA authors did not.) Lott found no statistically significant effect on gun deaths, which were the focus of the JAMA study. Lott also looked at other violent crimes, which the JAMA authors did not. For most crimes, there was no statistically significant impact, except that rape

rose 3.6 percent and aggravated assaults against women rose 2.5 percent-- perhaps because the Brady waiting period delayed handgun purchases by up to five government working days, even for women who needed immediate protection against stalkers and similar threats. (The research is reported in Lott's book [*More Guns, Less Crime*](#).)

Despite the evidence that the Brady Act *increased* crime, gun control advocates want to spread the Act even further.

Various gun prohibition advocates brag about how many people have been denied the right to purchase a firearm under the state or federal background check system. From the point of view of a firearms prohibitionist, every denial is necessarily a good denial. But the public deserves to know that the very large majority of denials have nothing to do with real criminals. In Colorado, for example, only 11 percent of all denials for firearms purchases are based on criminal convictions. The vast majority are for non-violent or low-level offenses. Another large group of Brady rejections are based on incomplete criminal justice records (e.g., the records show an arrest, but not that the case was dismissed).

As for the small number of active violent criminals who actually attempt to buy guns in gun stores, nothing in the Brady Act could stop them from buying a black market gun.

VII. The Real Basis for the Campaign against Gun Shows

Gun shows are huge gathering points for people who are interested in Second Amendment issues. Gun rights groups frequently set up booths at gun shows to distribute literature and recruit members. Although the campaign against gun shows makes very little sense as a crime control measure, the campaign is eminently sensible as a political measure. Shutting down gun shows means shutting down one of the most important ways that gun rights activists communicate with gun owners who do not already belong to gun rights groups. Until the political base of the gun rights movement is destroyed, the most ambitious objectives of the anti-gun movement remain very difficult to achieve. Given the slender margins of the 2000 elections, if there had not been any gun shows in 2000, it is likely that Al Gore would be President and Richard Gephardt would be Speaker of the House. There should be no doubt that the leaders of the movement of the current campaign against gun shows want the shows to be abolished entirely; the issue of background checks for is merely a wedge to accomplish this goal.

Gun shows are, obviously, also important forums for commercial free speech, as observed by the Ninth Circuit Court of Appeals. [[*Nordyke v. Santa Clara*](#), 110 F.3d 707 (9th Cir., 1997).]

Unfortunately, that Senator McCain's campaign against gun shows is not his only effort to suppress the speech of businesses, organizations, and individuals which happened to oppose him during the 2000 presidential

primaries. The McCain-Feingold campaign finance bill would also impose strict controls on groups who want to criticize federal officials during the sixty days before election -- controls on precisely the kinds of speech which led to so many gun owners voting against Senator McCain in the primaries.

A. Banning Gun Shows Entirely

First of all, as detailed in [Part I](#) of this Issue Paper, the McCain-Lieberman bill is loaded with poison pills which would allow a single appointed official to prevent any gun show, anywhere in the United States from operating. Gun shows would be forbidden unless the promoter received a special license from the Department of the Treasury, and the bill contains no requirement that license applications be processed in a timely manner. *Promoter*licensing has nothing to do with requiring *vendor*sto conduct background checks -- as Colorado's vendor-only statute demonstrates.

In fact, the very groups which claim they want to close the so-called "gun show loophole" have also advocated banning gun shows entirely. The Brady Campaign has lobbied successfully in California for several local governments to forbid gun shows on government property -- even though California state law requires background checks for all gun show sales.

The "Million" Mom March has merged with the Brady Campaign. Mary Blek, the MMM's President, claims that she does not oppose gun shows *per se*. Yet she alleges that gun shows are a "carnival atmosphere" at which it is inappropriate for people to decide whether to buy a gun. (Nov. 28, 2001, McKendree College debate with John Lott).

As in California, all gun show sales in Maryland must have background checks. Yet Marylanders Against Handgun Abuse -- the state affiliate of the Brady Campaign -- lobbied the Montgomery County Council to [expel](#) gun shows from county property. (The Montgomery law was later declared void because it conflicted with Maryland state law specifying that all gun laws must be enacted by the state legislature, not local governments.)

B. Registering All Guns and Gun Owners

As detailed in [Part III](#), there is no gun show "loophole." Laws about gun sales are gun shows are just the same as they are everywhere else: Firearms dealers must conduct background checks; occasional private sellers need not. The Brady Campaign has been very forthright in stating that its gun show proposals are merely a step towards requiring government permission for all gun transfers, no matter where they take place, and for registering all guns and gun owners. (Michael Barnes, Brady Campaign, press conference, Washington, D.C., Dec. 13, 2001.) In gun control, as with other issues, salami tactics tend to work best; thus, after imposing background checks on all private transfers in California (effective Jan. 1, 1991), the Brady Campaign in 2001 successfully lobbied California to register all guns.

Americans for Gun Safety -- which styles itself as more moderate than the Brady Campaign -- has not been so forthright, although internal strategy documents state that licensing and registration of every gun owner in the United States is the top long-range goal for AGS.

What comes after gun registration? California, New York City, England, Canada, and Australia have already used gun registration lists to confiscate long guns. They are following the strategy enunciated by the Brady Campaign (which originally called itself the National Council to Control Handguns). The group's Chairman, Nelson "Pete" Shields, explained:

"The first problem is to slow down the number of handguns being produced and sold in this country. The second problem is to get handguns registered. The final problem is to make possession of all handguns and all handgun ammunition--except for the military, police, licensed security guards, licensed sporting clubs, and licensed gun collectors--totally illegal." (Richard Harris, "A Reporter at Large: Handguns," *New Yorker*, July 26, 1976, p. 58.)

Conclusion

Gun shows are places where Americans properly exercise their First and Second Amendment rights. Neither gun show patrons nor vendors deserve the mean-spirited campaign of abuse to which they have been subjected. Research data about crime guns show that gun shows play virtually no role in criminal gun acquisition. The so-called "gun show loophole" is a fraud; laws at gun shows are already the same as everywhere else. To impose additional restrictions solely on gun shows is to make laws at gun shows more restrictive than at any other location. Rather than being aimed at a source of crime guns, the campaign against gun shows is aimed at a major free-speech and assembly forum for Second Amendment advocates. The vast attention which anti-gun groups have given to gun shows makes little sense from a crime-control viewpoint, but tremendous sense from a political viewpoint. The McCain-Lieberman bill contains numerous provisions which would allow a federal bureaucrat to make it nearly impossible to actually operate gun shows in the United States.

*David B. Kopel is Research Director of the [Independence Institute](#), a free-market think tank in Colorado. [Alan Korwin](#) is author of *Gun Laws of America* and numerous books about state firearms laws.*