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A growing number of jurisdictions have adopted a policy of submitting all firearms confiscated by the police for tracing by the Bureau of Alcohol, Tobacco, and Firearms. A successful trace establishes the identity of both the buyer and the seller at the first retail sale. Promising but controversial uses for these data include: (1) informing strategic planning for supply-side interdiction efforts directed against the illicit market in firearms; (2) targeting specific dealers and traffickers for enforcement action; and (3) providing an empirical basis for evaluating laws regulating firearms commerce. This article assesses each of these uses in general terms and then reports the results of a new analysis of 1999 firearms-trace data, documenting some of the patterns relevant to informing a supply-side effort. The third use is illustrated by an analysis of the effects of the Brady Law on gun trafficking to Chicago.

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An inquiry into the relation between tort law and criminal behavior reveals an inconsistency that requires redress. Negligence doctrine expressly recognizes that the threat of criminal and tort liability does not induce perfect compliance with the law, whereas the rule of strict liability for abnormally dangerous activities assumes everyone acts lawfully. For reasons illustrated by the tort cases involving the manufacture and distribution of handguns, courts should eliminate the inconsistency by applying the rule of strict liability in a manner that accounts for unlawful behavior. This approach is faithful to the rule of strict liability in the Restatement (Second) of Torts, and would let

courts directly address the normative issue posed by the application of strict liability to the manufacture and distribution of handguns.

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More than thirty cities and counties and one state attorney general have brought lawsuits against the manufacturers, distributors, or dealers of handguns based on marketing and distribution practices that knowingly facilitate easy access to handguns by prohibited purchasers and persons intent on crime. The primary claim has been public nuisance. State and local governments have the traditional power and duty to bring public nuisance lawsuits. In addition, private plaintiffs who have been harmed by a public nuisance may assert a public nuisance claim in some circumstances. This Article sets out and assesses the traditional requirements for a private-party public nuisance claim and considers whether individual victims of firearms violence satisfy those requirements, concluding that they do.

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In contrast to burglars in other nations, the vast majority of American burglars attempt to avoid “hot” burglaries – entry into an occupied home. This article suggests one reason that American burglars are so averse to hot burglaries is that they face a notable risk – not faced by burglars in other nations – of being shot by an armed victim. Because burglars do not know whether any particular American home has a firearm, and because the odds are significant that any given American home does have a firearm ready for home defense, homes without guns also enjoy the deterrent effect of widespread gun ownership.

“PROJECT EXILE” AND THE ALLOCATION OF FEDERAL LAW ENFORCEMENT AUTHORITY	<i>Daniel C. Richman</i>	369
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This article explores the political significance and uses of “Project Exile,” which has targeted gun violence in Richmond by funneling all gun arrests to federal court. After recounting how the program’s focus on gun-carrying criminals made it useful, first as a sword for Republican foes of new firearms regulation, and then as a shield for Clinton Administration efforts to expand federal enforcement efforts, the article assesses the institutional implications of making Exile into a template for a nationwide anti-violence strategy, as President George W. Bush now proposes. It concludes that although such a strategy principally reflect its sponsors’ positions on gun control, it also seriously challenges the very idea of a distinct federal enforcement policy in the areas where federal, state and local authority most overlap.

GUNS, DRUGS, AND PROFILING: WAYS TO TARGET GUNS AND MINIMIZE RACIAL PROFILING.....	<i>Jerome H. Skolnick & Abigail Caplovitz</i>	413
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This Article focuses on the social impacts of police behavior in trying to remove guns (and drugs) off the street through street level searches. Acknowledging that such searches are the only way to find contraband possessors, the Article looks at how well police identify people to search. Discussing the little data currently available, we discover that the police are unnecessarily inefficient because of unjustified reliance on a suspect profile of “black.” The available data support our rejection of profiling defenders’ claims that, while racial profiling is bad, police are doing something else--empirically, not racially, grounded profiling. The Article then offers a way to quantify the social cost of racial profiling and recommends ways that police management, judges, prosecutors and civilians can create incentives to minimize that harm.

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