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the legal investigator

The Official Journal of the National Association of Legal Investigators

TRACING FIREARMS

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How do you find a person who went missing over 30 years ago when you only have a photo, date of birth, and social security number? Find out best practices and the benefits of creating a team of NALI members to assist in the investigation.

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Find out how the mounds of cell phone data produced from digital forensics can result in rich evidence. Learn about current issues and the manner of obtaining the information through private or public means.

SAVE THE DATE | p.16

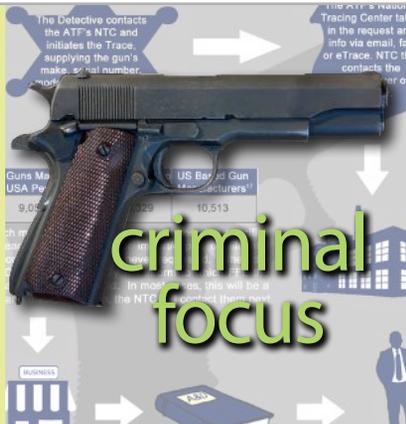
Mark your calendars for the NALI Mid-Winter Conference January 26-28, 2016 in sunny San Diego at the Bahia Resort Hotel. Revel in the beautiful resort gardens at the heart of Mission Bay. Don't miss the great networking, speakers, and fun.



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Tracing Firearms: Following Paper in a Digital World | p.4

Learn how legal investigators obtain a trace on a gun without direct access to the Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF) National Tracing Center. Understand the process for a trace, how gun records are kept and for how long, what happens if a gun retailer closes up shop, and more.

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by David Rich



On October 14, 2016, the NTC informed me they do not offer the ability for us to trace firearms, unless our client is a governmental agency or entity (a city or town or similar)."

Guns Made in USA Per Year
Guns Imported to USA Per Year
US Based Gun

9,050

TRACING FIREARMS

Each man... of each... rep... NTC cont... firearm was... firearm dis...
... on the... FL the... will be a... next.

Following Paper in a Digital World

In today's world of instant results from wide ranges of information sources, many professionals in the world of investigations sometimes give little thought to how a perpetrator is found in crimes where a firearm is involved. Sure, if the shooter is found with the gun in hand the crime may be solved.

But, HOW did the defendant get that gun? Can't the investigators involved simply plug the defendant's name into the computer and learn where and when he bought that gun? What if only the gun is found at the crime scene? Surely the police can simply type in the firearm's serial number and learn who bought it, right?

TV and movies this isn't... in real life it's much more complicated.

Do Databases of Gun Owners Exist?

In a nutshell, yes... and no.

The Federal Firearm Owners' Protection Act of 1986 (FOPA) made it illegal for the US government or any state to keep any type of database that ties firearms directly to their owners. This law was enacted for many reasons, with the protection of citizens' rights and information as the main theory.

Regardless, there are a number of US jurisdictions that do, in fact, keep records of what is owned by their residents. Research shows that Massachusetts, Connecticut, New York, California, Hawaii, New Jersey, Maryland and some other states, plus New York City, have some form of gun registry,^{1,2,3} although one will notice these jurisdictions don't officially call them a "firearm registry." Logic suggests they probably don't want to call their gun registries exactly what they are for political reasons... combined with the fact the 1986 Firearm Owner's Protection Act prohibits such collections.

Additionally, the Bureau of Alcohol, Tobacco, Firearms and Explosives (commonly referred to as the ATF) does have some records in a database. Those records are tied to specific items restricted under the National Firearms Act (NFA), which in its current form requires registration of specific items. This law was put in place in 1934, modified in 1968 through the Gun Control Act (GCA) and then further modified under 1986's FOPA,⁴ mentioned above. Without going into detail, the items regulated under the NFA requiring registration are fully-automatic firearms (i.e. "sub/machine guns"), silencers, short-barreled rifles ("SBR"), short-barreled shotguns ("SBS") and Destructive Devices (grenades, bombs, calibers over .50 cal, etc.). These are informally known as "Class III weapons".

"Class III" regulated items are still available... well, sort of. Before the NFA, one could basically go into a Chicago area hardware store with \$200 and buy a "Tommy" submachine gun.⁵ Today, fully automatic firearms manufactured after 1986 are not available to civilians and are (basically) only available to government entities. A transferable Thompson submachine gun will now cost around \$21,000⁶ ; a Colt M16A1 transferrable rifle will now cost around \$32,000.⁷ By the way, if one can legally possess one of these guns, they will have to apply to the ATF (with a \$200 fee), notify their local chief law enforcement officer, and undergo a lengthy background check. These backgrounds are currently taking the ATF nine months to complete.⁸ Even with all these obstacles, as of February 2015 the ATF reports there are 575,602 machine guns in the U.S. and U.S. Territories.⁹

A person buying a regular handgun, rifle or shotgun (i.e. one not regulated by the NFA) doesn't have to go through all this. These are the vast majority of firearm transactions.

Legally Buying a Gun Today

Before we get into the real-world process of tracing a firearm, we should start in reverse order. How does one legally buy a regular handgun, shotgun or rifle in a gun shop?

There are many characteristics one may possess that prohibit them from purchasing (or even holding) a firearm. First, one has to be at least 18 years old to buy a long

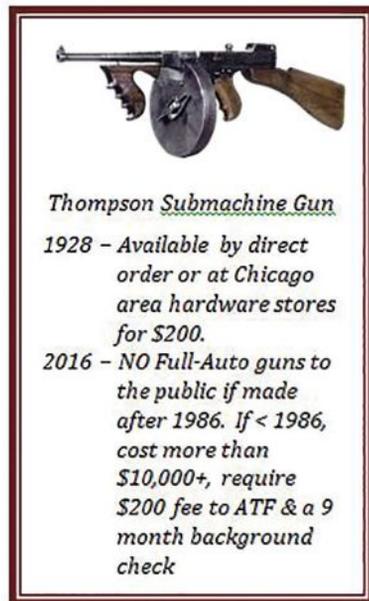
gun (rifle or shotgun) and at least 21 years old to buy a handgun. Once someone has picked out the firearm they want to buy at the gun shop, they have to submit to a background through the National Instant Criminal Background Check System (NICS). The individual will have to produce valid government-issued photo identification such as a state Drivers License or Concealed Weapons

License and also complete the ATF's Form 4473. There is no way around these requirements unless they are a licensed firearm dealer themselves.

The purchaser/transferee will be asked some verifiable demographic questions on the Form 4473. The residential address must match their Drivers License or they will also have to provide a government-issued document showing current residential address, such as a county tax bill. After the demographic questions, they are asked a series of questions to see if they qualify to buy the gun.

Possessing any one of these characteristics will disqualify someone from buying the firearm:

- Not being the person for whom the firearm is purchased
- Having felony conviction(s) in their past from any jurisdiction
- Active warrant(s) (felony or misdemeanor) from any jurisdiction
- Being an unlawful user or addicted to any controlled substance
- Having been adjudicated mentally defective or involuntarily committed in a court to a mental facility
- Illegal alien status/not legally in the U.S.
- Dishonorable discharge from the U.S. Armed Forces
- Renounced United States citizenship



- Active protection order (injunction for protection, restraining order, etc.)
- Convicted of a misdemeanor crime of domestic violence
- Under indictment or information for any crime punishable by a term exceeding one year in prison.

Some states may have additional disqualifiers. For example, in Florida these will also disqualify someone from purchasing a firearm:¹⁰

- Adjudicated delinquent or received adjudication withheld as a juvenile for a felony charge and person is under the age of 24
- Adjudication withheld for any felony or a misdemeanor crime of domestic violence and three years has not yet lapsed since the completion of sentencing provisions

Once they have finished the ATF Form 4473, they must sign and date the form. It is now the shop's/Federal Firearms Licensee's turn to complete a few sections on the same Form 4473. All businesses selling firearms in the United States must hold a Federal Firearms License (FFL) issued by the ATF.

On the Form 4473, the gun store/FFL must specify if the item being purchased is a Handgun, Long Gun or "Other Firearm" (i.e. a gun frame or receiver). They then put down the importer and/or manufacturer of the firearm being sold, the model number, the serial number and the caliber or gauge of the firearm.

When the FFL calls in to the FBI (or state agency contracted by the FBI) to do the NICS check, they must put down the date the check is done, as well as the results of the check and related Control Number. The FFL/dealer then signs and dates the form on the actual date the firearm is transferred to the buyer, assuming an Approval was issued by the FBI. Federal law requires a three-day "cooling off" period before the buyer may actually take possession of a handgun, unless they have a Concealed Weapon Permit and their state allows this exemption.

The NICS check stays in the FBI's records. If the check resulted in an approval, the identifying data of the transferee is destroyed by the FBI within 24 hours. If the result

of the check was a denial for the transfer, the full record stays in the FBI's files for at least 10 years.¹¹

For purposes of a gun trace, this is where it gets interesting. This ATF Form 4473 just completed and signed by the buyer and gun dealer does not get turned into the government. By federal law, it now must stay in the FFL/dealer's possession, in chronological order, for at least 20 years. If the FFL closes up shop, they are required to send all the Form 4473s in their possession to the ATF's National Tracing Center (NTC). The NTC receives an average of 1,200,000 out-of-business paper records per month.¹² Besides NFA and out-of-business records at the NTC, there are also an untold amount of firearm transaction records being kept on-site at the thousands of operating FFL shops across the USA.

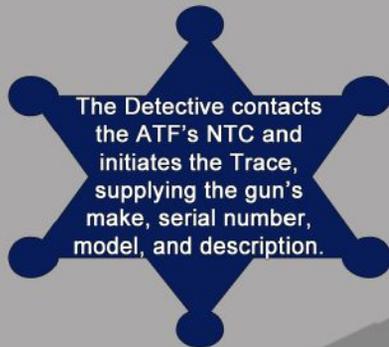
The Actual Gun Trace; Welcome to the ATF's National Tracing Center

On the federal level, the ATF holds and researches millions of records, and does so without using a computerized database. Since the 1986 FOIA prohibits any database linking legal firearms with legal owners, the ATF's National Tracing Center performs its function via paper, microfilm and a "repository" of unlinked computer records. With about 14.4 million closed-FFL firearm forms received per year, plus any reported firearms lost/stolen, the NTC has millions upon millions of paper and microfilm records in their building and the many shipping containers-converted-to-storage in their parking lot in West Virginia.

The National Tracing Center is the nation's only crime gun tracing facility.¹³ Even with the large volume of paper and microfilm records, the NTC processed 373,349 trace requests from Law Enforcement Agencies in the US and abroad in fiscal year 2015¹⁴ and does most of them within a few days.

So what happens when a firearm-involved crime occurs, and the police detective involved needs to learn more about a gun found at the scene? Since the ATF Form 4473 completed during legal sale at the gun dealer stays with the FFL, the ATF's National Tracing Center most likely doesn't already have this gun's history. Here's how the local police detective learns who purchased the firearm:

ATF NATIONAL TRACING CENTER CONDUCTING A GUN TRACE (SIMPLIFIED)



Guns Made in USA Per Year ¹⁵	Guns Imported to USA Per Year ¹⁶	US Based Gun Manufacturers ¹⁷
9,050,626	3,930,329	10,513

Each manufacturer or importer must keep the specifics of each gun they make or import/export on file and report this to the ATF whenever requested. When the NTC contacts them, they will inform to which FFL the firearm was shipped/sold. In most cases, this will be a firearm distributor. If so, the NTC will contact them next.



After calling the distributor (if there was one), the NTC will then contact the local FFL that received the gun. The FFL has 24 hours to respond.

The FFL will look in their Acquisition & Disposition Record Book and find the transaction. The FFL will then pull the original ATF Form 4473 signed by the purchaser, and send it to the NTC.

With the original Form 4473, the NTC will notify the Detective of who 1st purchased the firearm. The investigation may continue, usually by talking to the original buyer now they are identified.

US Based FFLs ¹⁸
55,940

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NTC Gun Traces Per Year ¹⁹	"Routine" Tracing Time (avg) ²⁰
373,349	5 days

¹⁵ Bureau of Alcohol, Tobacco, Firearms and Explosives. ANNUAL FIREARMS MANUFACTURING AND EXPORT REPORT, Annual 2014 Final (Washington, DC, 2015)

¹⁶ Bureau of Alcohol, Tobacco, Firearms and Explosives. Firearms Commerce in the United States, Annual Statistics Update 2016 (Washington, DC, 2016), 5

¹⁷ Bureau of Alcohol, Tobacco, Firearms and Explosives. Report of Active Firearms Licenses - License Type by State Statistics, January 11, 2016. (Washington, DC, 2016), 2

¹⁸ Ibid, 2

¹⁹ Bureau of Alcohol, Tobacco, Firearms and Explosives. Fact Sheet - National Tracing Center, March 2016. (Washington, DC, 2016)

²⁰ Ibid

When the trace is completed, the Police Detective will receive a report similar to this example back from the NTC:

NTC's Firearms Trace Summary, retrieved from <https://www.thetrace.org>

The investigating detective now has not only the original purchaser's name, but also a basic physical description, their address and most likely a state drivers license number and the retail location where the gun was sold. The original shop may have video of the buyer. Also on the summary is the "Time to Crime", i.e. the length of time from the legal purchase to when the gun was found involved in a crime. A short Time to Crime stat may be an indicator of a "straw purchase"; when a buyer legally qualified to purchase a firearm does so for an individual that has been (or will be) blocked from the legal purchase. A straw purchase is a violation of the law for both the actual buyer and the actual recipient of the firearm.

Do the traces always come out with the exact person who committed the crime? Of course not. The firearm may have been legally sold individual to individual, and most states do not require these types of sales to undergo a NICS background check. Remember, most criminals are not going to attempt to legally obtain a firearm. Their attempted purchase will likely be disqualified, resulting in the illegal attempt investigated by the ATF.

No Direct Access for the Legal Investigator

As for private investigators and attorneys, we are not directly afforded this access. On October 14, 2016, the NTC informed me they do not offer the ability for us to trace firearms, unless our client is a governmental agency or entity ("a city or town or similar"). Also, every request to the NTC must contain the requestor's ORI ("Originating Reporting Identifier"; a number issued to government law-related entities such as police departments). When asked if a subpoena would generate a response from the NTC, they said if we need gun trace information, we should contact the prosecutor or law enforcement agency in the matter we're working. Obviously, if you're working a criminal case, it would be prudent to make sure the official NTC trace results are included in the Discovery request.

The National Tracing Center also made sure I understood they would not supply any firearm trace information for a criminal defense matter. They mentioned this twice in our conversation.

Could a private investigator conduct a gun trace? It should be possible, if they can get the manufacturer to cooperate. Assuming the firearm manufacturer agrees to supply the information, or responds to a subpoena in a timely manner, the investigator could follow the same path the NTC does to reach the final pre-retail sale FFL and then onto the buyer. Unfortunately, I doubt the results would be realized as quickly as when the National Tracing Center conducts a trace, but ultimately, it should still be possible.

All things considered, with the high volume of trace requests received, "urgent" requests being done in 24 hours or less (the San Bernardino, CA shooters trace was done in a few hours), the ATF's National Trace Center has their job cut out for them. With limited budget, resources and methods, the latter required to be restrained by federal law, the ATF's National Tracing Center performs admirably and continues to offer this invaluable service to law enforcement agencies around the world.

David Rich is the owner and lead investigator of Investigative Tactics, a full-service Florida licensed investigation agency handling both civil and criminal cases. In addition to investigations, he also owns Naples Gun School offering handgun classes and FFL sales & transfers. David may be contacted at Dave@InvestigativeTactics.net or Dave@NaplesGunSchool.com.

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- ⁸ Bureau of Alcohol, Tobacco, Firearms and Explosives, ATF Seminar With FFL Holders (Fort Myers, FL) August 9, 2016
- ⁹ Bureau of Alcohol, Tobacco, Firearms and Explosives. Firearms Commerce in the United States, Annual Statistics Update 2016 (Washington, DC, 2016), 15
- ¹⁰ Florida State Statute 790.065
- ¹¹ 28 CFR (Code of Federal Regulations) § 25.9 - Retention and destruction of records in the system
- ¹² Bureau of Alcohol, Tobacco, Firearms and Explosives. Fact Sheet - National Tracing Center, March 2016 (Washington, DC, 2016)
- ¹³ Bureau of Alcohol, Tobacco, Firearms and Explosives. 5 Fast Facts About the National Tracing Center (Washington, DC, 2016), 1
- ¹⁴ Bureau of Alcohol, Tobacco, Firearms and Explosives. Fact Sheet - National Tracing Center, March 2016 (Washington, DC, 2016)

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