THE STING

New York has devised an ingenious approach to stopping the flow of guns into the city. Could it work for Boston?

By Timothy D. Lytton

FOR MORE THAN A DECADE, Mayor Thomas M. Menino has been a national leader in finding creative new ways to reduce urban gun violence. His pioneering efforts—including Operation Ceasefire and the Boston Gun Project—produced a decline in gun violence rates in the late 1990s so dramatic it became known as the “Boston miracle.” But recently, the city has witnessed a resurgence in violence. The city’s 75 homicides in 2005 was the highest number in a decade, and 2006 may bring a greater number still.

One of the biggest challenges Menino faces is cutting off the supply of guns used in violent crimes, a challenge made more difficult because so many guns used in Boston are purchased somewhere else. According to statistics from the federal Bureau of Alcohol, Tobacco, Firearms, and Explosives (BATFE), most guns recovered from crimes in big cities like New York and Boston were originally purchased in states with relatively few restrictions on gun sales.

In an effort to stop the flow of guns from other states, cities have turned to litigation. Since 1998, more than 30 major US cities have filed lawsuits against the gun industry seeking to force gun manufacturers, wholesale distributors, and retail dealers to end careless and often illegal sales practices that make it easier for criminals to obtain guns. But most of these suits have been dismissed by courts prior to trial, pre-empted by state legislatures, or simply abandoned by the mayors who filed them. (Boston filed such a suit in 1999 but abandoned it three years later when the city could not afford to continue.)
New York City's lawsuit is based on BATEP data that traces the sales history of guns recovered in crimes in a number of US cities between 1994 and 2001. The data revealed that more than 500 guns used to commit crimes in the city were sold by just 15 gun dealers in Georgia, South Carolina, Virginia, Ohio, and Pennsylvania.

Earlier this year, the city hired a private investigative firm to conduct a sting operation against these 15 dealers. Investigators, working in pairs, videotaped gun sales to individuals whom the clerks believed to be straw purchasers. A straw purchaser is an individual who fills out the personal information required to purchase a gun for another person, typically one who is legally ineligible based on a felony conviction or other disqualification. Federal law prohibits licensed dealers from making a sale when they have a reasonable belief that the firearm being sold is not for the person doing the purchasing.

In the New York City sting, one investigator would be a cover and the other all of the inquiries about purchasing a firearm. New York City Mayor Michael Bloomberg presents video clips from the city's sting operation against 15 out-of-state gun dealers in May.

City Corporation Counsel Michael Cardozo has explained that just as the city might sue to stop the illegal dumping of sewage into waterways that flow into the city, it is now suing to stop the illegal dumping of guns into the black market that ends up in New York. The suit seeks compensatory and punitive damages and asks the court to put an end to the illegal sales.

The two dealers who have settled agreed to supervision of their sales practices by a court-appointed special master chosen and paid for by the city. The special master will be given unrestricted access to the dealers' records and inventory and will be empowered to conduct ongoing surveillance. Five or six more of the dealers are currently considering a settlement. The remaining dealers have, for now, decided to fight the suit in court.

Previous lawsuits by other cities have been largely unsuccessful because judges have been unwilling to hold the gun industry as a whole responsible for the misconduct of a few rogue dealers. New York City's suit gets around this problem by focusing exclusively on particular dealers whom it can prove have conducted illegal sales. Equally significant, the city filed its suit before Federal Judge Jack B. Weinstein of the Eastern District of New York, which is not notorious for sympathy to gun rights advocates.

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to pay the $30,000 per month needed to keep it going. Last year Congress passed federal legislation aimed at eliminating the few suits that remain.

Against this backdrop, New York City Mayor Michael Bloomberg's announcement in May of a civil lawsuit against 15 out-of-state gun dealers for illegal gun trafficking underscores the intense debate over gun rights and gun safety. The mayor surprised everyone when, a few weeks ago, he announced a settlement with two of the dealers, in Georgia, who agreed to court supervision of their sales practices. The settlement marks a rare victory in the eight-year history of municipal gun litigation and a vindication of the mayor's efforts to stick with the strategy of pursuing gun control through the courts.

Bloomberg's success may tempt other big city mayors, including Menino, who has worked with Bloomberg on the issues of guns before, to again pursue gun control through the courts. But while Bloomberg's approach may be innovative, it may also be hard to replicate — especially if gun rights advocates have their way.

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100,000 licensed gun dealers, and the agency is limited by statute to one unannounced audit of a dealer in any given year. Litigation, as Mayor Bloomberg puts it, "sends a message" to rogue dealers that even if they stand little chance of getting caught by law enforcement, they could be subject to civil suit for violations of federal law.

Yet as other cities look to New York's gun-dealer lawsuit as a model for how to get guns off the street, they need to be aware that Mayor Bloomberg's victory may be a hard one to emulate. Gun rights advocates are lobbying hard in Washington for a measure that would restrict the law enforcement's ability to trace guns, and the 15 dealers' suits, if they place, will deprive New York City and any other cities that wish to file similar suits, of the only tool available to identify gun dealers linked to illegal sales.

There are also those who would argue that by enforcing more vigorous enforcement of federal sales restrictions on gun dealers, Bloomberg's office is not so much complementing federal gun control policies as contradicting it. In 1996, Congress passed the Firearm Owners Protection Act, or FOFA, which significantly restricts the powers of the BATEP to enforce federal gun laws (gun rights advocates were concerned that the bureau was using its powers to harass dealers).

FOFA was the product of a seven-year legislative battle in Congress and the result of sustained consideration, debate, and compromise. New York City's gun dealer lawsuit is designed to replace the federal government's scheme of limited enforcement with one of vigorous enforcement — paid for by the city of New York and enforced by a federal judge in Brooklyn.

As long as illegal gun sales continue to fuel a rise in urban gun violence, however, proactive mayors like Bloomberg and Menino are likely to seek novel ways to crack down on illegal gun trafficking. For now, New York City's gun-dealer lawsuit looks like a promising new approach. But its prospects will depend not only on its impact on the streets of New York but also on its reception in the halls of Congress.