

Countermarketing in the Courts: The Case of Marketing Channels and Firearms Diversion

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Rarely has the field of marketing thought been closely associated with the topic of citizens' use of firearms in the United States, but it is now at the center of interest in this controversial and multifaceted area. Public policy has not yet resolved the challenges from conflicts among personal freedoms, fundamental rights, deaths, pain, and huge dollar expenditures to address the problems from guns used in crimes; it is still evolving in this area. A more recent addition to the public policy debate is a set of major judicial cases that raise issues about the U.S. distribution system for firearms, how it is designed and operated, and what role it should play with respect to contributing to the control of firearms diversion. In response, marketing academics have begun to conduct channels-of-distribution analyses to inform these judicial deliberations. This article presents the framework of one such analysis and reveals the considerable insights that marketing theory and concepts, especially countermarketing, demarketing, and channels-of-distribution theory, can bring to public policy makers' understanding of these issues. In addition, assessment of this framework should assist marketing scholars in explicating key topics for future attention in the realm of the marketing of other potentially harmful or dangerous products and services.

[Note to readers: The topic of this article is imbued with emotion and controversy. Strong differences of opinion exist with respect to trade-offs between fundamental freedoms of U.S. citizens and safety, security, and protection. This article does not take sides in these matters. In addition, some of the safeguarding options discussed in this article may generate resistance by individual channel members because of anticipated cost or revenue implications. Other possible industry responses could involve issues of market power or concentration. However, there is a legitimate need for understanding of the role of marketing and, specifically, the distribution system for firearms in contributing to and/or addressing the problem of firearms diversion. The article begins with a brief background of this industry and its problem with diversion and subsequent criminal activity. It then extends accepted insights into marketing as demand management to develop a countermarketing and demarketing channel management framework that illuminates an array of proposed safeguards against diversion, thus providing a source of conceptual understanding and significant insights into plausible safeguarding steps for consideration by the courts. Overall, we offer this article as a structured appli-

cation of marketing thought to a serious societal issue, presenting a framework to assist the judicial system's determinations in addressing this area.]

Evolving Initiatives: A Focus on the Distribution of Firearms

For years, considerable attention in U.S. society has centered on problems of firearm-related violence, injury, and death. Advocates for both stringent and relaxed government controls on firearms have been active on all of these fronts through the years as the governing system has evolved. Recognizing that their set of efforts has not succeeded in resolving all of the problems, the proponents of gun control have also begun to rely on a strategy of bringing litigation through the courts as a tool for change. Thus, the judicial branch is now at the center of public policy interest regarding firearms.

Advocates of gun control and public safety groups have teamed with some 30 municipal governments to launch several massive lawsuits against members of the gun industry (including manufacturers, distributors, and dealers). These lawsuits contend that "diverted firearms" are a significant source of crime in the United States and that firearms manufacturers and distributors are doing too little across their distribution systems to safeguard or counter such diversion.¹

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¹Thorny legal questions exist in these cases and are beyond the scope of this article. A chief basis for these lawsuits is "liability for a public nuisance," which includes as elements of proof (1) the existence of a public nuisance (i.e., a substantial interference with the exercise of a public right) and (2) negligent or intentional conduct or omissions by a defendant that create, contribute to, or maintain that public nuisance (*NAACP v. Acusport*

These lawsuits attempt to force firearms manufacturers and sellers to engage in safer distribution practices and, in some instances, to recover the high derivative public costs of gun-related violence and death.

The industry has vigorously fought these suits. Some have been dismissed, and some dismissals have been reversed by appellate courts and are proceeding (Campbell and Stypinski 2004). The picture in the courts is mixed at present because some major lawsuits are still in process. In this regard, the 2003 decision in *National Association for the Advancement of Colored People (NAACP) v. Accusport Inc. et al.*, though the case was dismissed on the basis that the NAACP did not have “standing” to bring the suit, actually appeared to offer strong support for gun control advocates. The opinion concluded that (1) “the evidence presented at trial demonstrated that defendants are responsible for the creation of a public nuisance” (p. 14), (2) “the evidence at trial demonstrated that the manufacturers and distributors ... can ... substantially reduce the number of firearms leaking into the illegal secondary market and ultimately into the hands of criminals in New York” (p. 21), and (3) “[t]he industry as a whole has not adopted a reasonable approach to limiting sales and supervising its retail outlets” (p. 22).

Given that the municipal suits do have standing and that the extensive new evidence uncovered in the NAACP case will be available to these ongoing cases, the likelihood of judicial action has seemingly increased (Campbell and Stypinski 2004). Furthermore, at least 20 court rulings in recent years have allowed suits filed by either individual gun violence victims or municipalities to proceed to trial, and recently, some have been successful (Siebel 2003). For example, in September 2004, the gun dealer who “lost” the Washington sniper’s assault rifle (along with 238 other guns) agreed to pay eight victims’ families a total of \$2.5 million, and for the first time, the manufacturer agreed to inform its dealers of safer sales practices to help prevent other criminals from obtaining guns (Brady Center to Prevent Gun Violence 2005).

Opponents of these lawsuits, including industry members and supporters, such as the National Rifle Association, have responded both in the courts and with “push back” in the legislative branch. Specifically, legislation has been brought forward in Congress that would grant gun firms immunity from prosecution in state and federal courts for harm caused through the use of firearms during the commission of a crime. In essence, this legislation is intended to stop the lawsuits by municipalities and gun control advocates because it would apply retroactively to all pending cases. Known as the Protection of Lawful Commerce in Arms Act (2005), it would not bar lawsuits based on manufacturing or design defects nor shield someone transferring a firearm with the knowledge that it would be used in a crime. This legislation has passed once in the House of Representatives by a two-to-one margin and has come up in the Senate with considerable support. However, it has met with strong opposition, and as with the lawsuits themselves, its future is unclear at this time.

Inc. et al. 2003, p. 10). Thus, marketing actions in relation to safeguarding against diversion are issues in these cases.

At the center of deliberations in the judicial branch are questions about marketing, particularly the issue of product diversion from legitimate channels of distribution into the illegal marketplace.² Marketing academics have recently been asked to present marketing theory, concepts, and analysis of the distribution system for firearms for the purpose of contributing to the understanding of the judges and juries who must attempt to decide the merits of these major lawsuits. Following a summary of the public policy issues in this area, we present a countermarketing/demarketing channel framework and apply it to the firearms industry.

Public Policy Background on the Problem

An Amazing Scope of Harm

There is little question that firearm-related violence is a major societal threat to human life and health in the United States today. Consider the following indicators of its scope:

- More than 300,000 violent crimes are committed with firearms each year.
- Nearly 30,000 people die from firearms annually.
- Guns account for an additional 80,000 nonfatal injuries each year.³

In economic terms, it is estimated that the costs from firearms violence exceed \$100 billion in the United States each year (Cook and Ludwig 2001). Consider just a partial list of the efforts and costs for goods and services that must be provided or supplemented to address this problem area:

- Ambulance and emergency room services;
- Doctors, nurses, and in-patient hospital care;
- Medicines and medical test services;
- Rehabilitation facilities and personnel;
- Coroner services;
- Funeral services;
- Police searches and criminal investigations;
- Criminal and civil court services;
- Attorneys’ services;
- Prison costs;
- Rehabilitation of property damage;
- Increased youth intervention programs;
- Increased security at airports, schools, and public buildings;
- Lost wages and increased welfare payments; and
- Replacement hiring and lost productivity.

More broadly, others in the society also incur costs in terms of losses in tax revenues and declining real estate values in areas that are rife with gun-related crimes (Adams 2004). Firearms violence also tears at the social fabric and

²In addition to the issue of firearms, similar questions arise in the marketing and distribution of tobacco, alcohol, pharmaceuticals, and other potentially dangerous or harmful products that may be sought by illegal or prohibited markets and those who may be harmed through their use (e.g., Di Franza and Tye 1990; Johnston, O’Malley, and Bachman 2002).

³Relevant statistics for these topics are available for customized analysis at the Centers for Disease Control and Prevention Web site (<http://www.cdc.gov/>). The violent crime statistic here is from USDOJ (2001).

brings both social and psychological costs to citizens, such as fear, insecurity, and anxiety and pain, suffering, and grief. Moreover, these harms from firearms violence are disproportionately experienced by particular societal groups.

An Overview of the U.S. Public Policy Framework for Firearms

Public Laws

The United States' societal position toward firearms is complex, contentious, and still evolving. Table 1 summarizes some of the federal laws that are pertinent to the marketing of firearms. As a set, these laws prescribe who may sell firearms, how they may be sold (including limitations on methods of distribution), the types of firearms that may not

be sold, the types of customers who may not be served and may not possess firearms, and requirements for sellers' record-keeping. In addition to the federal level, each of the 50 states and many cities and localities also have laws to regulate the purchase, sale, and (in certain circumstances) possession and distribution of firearms, which may impose further requirements and restrictions. At all levels, the courts have issued numerous rulings on the interpretation and application of these laws. At times, these rulings have relaxed the restrictions on firearms imposed by law, and at other times, they have furthered such restrictions.

Problems in Enforcement of the Laws

Enforcement of the firearms laws and regulations occurs through the executive branch of government and comprises

Table 1. Selected Federal Firearms Legislation

Law	Description
National Firearms Act of 1934	Requires registration and taxing of a class of weapons that includes machine guns, short-barreled rifles, and shotguns; silencers (suppressors); and a class of weapons known as "any other weapon."
Federal Firearms Act of 1938	Requires gun and ammunition makers, dealers, and importers to obtain licenses, and restricts the delivery of guns to those not eligible to possess them (e.g., felons).
Gun Control Act of 1968	Increases restrictions on the sale and possession of firearms. Among other things, the law bans mail-order sales of firearms.
International Security Assistance and Arms Export Control Act of 1976	Provides the president authority to control imports and exports of "defense articles," including firearms and ammunition. Requires permits and licenses to import and export such articles; certain "proscribed countries" are prohibited.
Federal Armed Career Criminal Act of 1988	Stiffens penalties for possession of firearms by those not eligible to have them (e.g., felons).
Firearm Owner's Protection Act of 1986	Amends the 1968 act. Eases restrictions on gun sellers and sales. Redefines the term "gun dealer" to exclude those making occasional sales or repairs. Repeals certain record keeping for ammunition sales, which had included the purchaser's name, age, address, and sale date. Permits mail-order sale of ammunition. Adds penalties for people using a firearm during certain crimes.
Crime Control Act of 1990	Prohibits the importation and manufacture of semiautomatic weapons ("assault weapons"). Other portions of this law establish "gun-free school zones." ^a
Brady Handgun Violence Prevention Act of 1993	Imposes a five-day waiting period and background check before a licensed gun dealer can sell or deliver a handgun to an unlicensed person. Requires immediate background check on FBI's criminal background check system; checks are done over the telephone or electronically, and there are immediate results. Records retained for 180 days by federal officials, but then they must be destroyed.
Violent Crime and Law Enforcement Act of 1994 (Assault Weapons Ban)	Bans the manufacture, possession, and importation of new semiautomatic assault weapons and large-capacity ammunition feeding devices for civilian use. Prohibits juveniles from possessing or selling handguns.
Youth Handgun Safety Act of 1994	Prohibits transfers and possession of handguns by anyone under the age of 18; however, there are exceptions for official military use and with written consent of a guardian for use in employment, ranching, farming, target practice, hunting, and handgun safety instruction. People ages 18 to 21 may still acquire handguns from nonlicensed sellers.

^aThis was overruled by the U.S. Supreme Court in *United States v. Alfred Lopez Jr.* (1995). The Court found that Congress had exceeded its authority under the Commerce Clause when it passed such an act. In response, more than 40 states outlawed the possession of a firearm within 1000 feet of a school.

Source: BATF (2000c).

federal, state, and local law enforcement agencies. As a law enforcement agency within the U.S. Department of Justice (USDOJ), the Bureau of Alcohol, Tobacco, Firearms, and Explosives (also known as the ATF and, here, as the BATF) is responsible for enforcing federal laws and regulations related to firearms, whereas in general, state and local law enforcement agencies enforce state and local firearms laws and regulations. The BATF attempts to pursue an integrated regulatory and enforcement strategy (see its Web site at <http://www.atf.gov>), and its priorities focus on armed violent offenders and career criminals, narcotics traffickers, narcoterrorists, violent gangs, and domestic and international arms traffickers.

As a primary strategy, the BATF issues firearms licenses and conducts firearms licensee qualification and compliance inspections. After a federal firearms licensee (FFL) is engaged in business, it is required to comply with federal laws and specific record-keeping regulations. However, according to consistent evidence across many years, the sheer volume of firearms, sellers, and transactions has swamped the BATF's capacity to cope with its mandates fully.⁴ One recent court opinion reported, "Three retired high ranking administrators of [the BATF] ... concluded that [it] lacked the ability to ... adequately regulate the gun industry, particularly the retail dealers, which are the primary conduit of guns from the legal ... to the illegal market" (*NAACP v. Acusport Inc. et al.* 2003, p. 74).

Thus, the reality today is that the scope of firearms transaction activity in the United States is far in excess of the monitoring capacity of the public sector.⁵ This is perhaps the major driving force behind the gun control advocates'

⁴The history of guns in this country is fascinating. Considerable public policy impetus stemmed from a dramatic undersupply of firearms for those entering the Civil War, leading to an official encouragement of maximum gun manufacturing (Bellesiles 2000). The most recent detailed exploration of the gun distribution system occurred just before the passage of the Brady Handgun Violence Prevention Act (1993): At that time, there were more than 280,000 FFL gun dealers in the United States (there were more FFLs than gasoline service stations in the country at the time), and the number of gun transactions numbered in the millions. Virtually anyone could apply for a new gun dealer license with a payment of only a small fee, and at that time, the BATF had 25 agents to investigate these new applications, which were arriving at a rate of 6000 per month (Subcommittee on Crime and Criminal Justice of the Committee on the Judiciary 1994). An internal study showed that more than 90% of all license applicants had not been visited or interviewed by an agency inspector before the license was issued (Painter 1994). Beyond the application phase, BATF's FFL inspection staff totaled only 180 agents; according to Senate testimony in 1993, an FFL dealer could expect a visit from a BATF agent approximately once every 20 years (Subcommittee on Crime and Criminal Justice of the Committee on the Judiciary 1994). Moreover, violations were commonly found when visits were made, at an estimated rate of 34% of FFL holders (Painter 1994).

⁵The passage of the Brady Handgun Violence Prevention Act (1993) and the national reaction to the terror attacks of September 11 have had significant impacts on the BATF. An impact of the Brady Bill was to reduce the number of FFLs substantially (from more than 280,000 in 1993 to 105,000 in 2004). However, the BATF was reorganized under the Homeland Security Act in 2003, and law enforcement operations were transferred to the USDOJ, where the BATF now resides. In addition, program status for explosives was added, reflecting a concern about terrorist activities. The agency is now named the Bureau of Alcohol, Tobacco, Firearms, and Explosives, and it must pursue enforcement in all four of these areas. For firearms, in 2003, the BATF reported having performed 3900 inspections of FFLs (less than 4% of the total) and another 7800 application inspections (see the BATF Web site at <http://www.atf.gov>).

massive lawsuit initiatives in the judicial system: Because the overall web of public laws and their enforcement is providing insufficient protection against diversion, what are the legal requirements of the private system? Thus, these lawsuits are demanding a clarification of the responsibilities of the private firearms marketing system: What are the appropriate roles and responsibilities for gun makers and sellers in light of these problems? The first issue in this regard involves firearms "diversion."

The Diversion of Firearms

Numerous Prohibited Market Segments for Guns

A crucial distinction within the system's statistics is that some firearms are obtained through legal means and are used for legal purposes; these firearms and the benefits they offer their owners are not at issue for the current article. As we noted previously, our focus is on the remaining firearms operating in society; a significant number of "crime guns" are reportedly obtained through firearms diversion, which has been defined as "any movement of firearms from the legal to the illegal marketplace through an illegal method or for an illegal purpose" (BATF 2000a, d).⁶ One prominent element of diversion involves people (purchasers, recipients, absconders, and/or users) who obtain firearms when this is clearly defined as illegal by the U.S. legal system. In marketing terms, as we show in Table 2, several segments of consumers are specifically prohibited from gun possession (including sale and transfer).

A New Threat: Gun Diversion and Terrorists

Public concern about the diversion of firearms has intensified as a result of the tragic events of September 11 and the ensuing worldwide interest in stemming the rising threat of terrorism. For example, documents seized recently at a training facility in Afghanistan for a radical Pakistan-based Islamic terrorist organization were found to single out the United States for its easy availability of firearms. These documents then went on to provide instructions to Al Qaeda members living in the United States on how to obtain firearms without arousing suspicion as they amass and transport weapons for terrorist activities (Brady Center to Prevent Gun Violence 2002). In this respect, it was recently discovered that 35 people on the U.S. terrorist watch list had purchased firearms legally during only a five-month period in 2004; pressure has now mounted to add the government's terrorist watch list to the list of prohibited consumers that appears in Table 2 (*The New York Times* 2005).

The Market Channel Structure for Guns: The Diversion Problem

As we noted in our discussion of the BATF, firearms are distributed through a market channel structure that involves federally licensed entities. A multitiered channel structure is typical; manufacturers sell to wholesale distributors that, in turn, sell to dealers who then sell to the public (Paumarck

⁶Diversion could be interpreted to include the acquisition of a firearm for a legal purpose, which would subsequently be used for an illegal purpose in a criminal act, though that act was not contemplated at the time of the original acquisition.

Table 2. Summary of the Illegal Market

Circumstance	Description of the Illegal Market
It is unlawful for any person to sell a firearm to any person having the following characteristics:	<ul style="list-style-type: none"> •Is under indictment for or has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year. •Is a fugitive from justice. •Is an unlawful user of or addicted to any controlled substance. •Has been adjudicated as a mental defective or has been committed to any mental institution. •Is an alien or is illegally or unlawfully in the United States. •Has been discharged from the Armed Forces under dishonorable conditions. •Was a citizen of the United States but has renounced his or her citizenship. •Is subject to a court order that restrains from harassing, stalking, or threatening an intimate partner or child of the intimate partner or person or from engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child.
It is unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector to sell or deliver the following: ^a	<ul style="list-style-type: none"> •Any firearm or ammunition to any person who the licensee knows or has reasonable cause to believe is less than 18 years of age. •Any firearm that is other than a shotgun or rifle, or is ammunition for a shotgun or rifle, to any person who the licensee knows or has reasonable cause to believe is less than 21 years of age. •Any firearm to any person in any state in which the purchase or possession of a firearm would be in violation of any state law applicable at the place of sale, delivery, or other disposition, unless the licensee knows or has reasonable cause to believe that the purchase or possession would not be in violation of state law. •Any firearm to any person who the licensee knows or has reasonable cause to believe does not reside in (or if the person is a corporation or other business entity, does not maintain a place of business in) the state in which the licensee's place of business is located.

^aThis does not apply to transactions among licensed importers, licensed manufacturers, licensed dealers, and licensed collectors.
Source: The Gun Control Act of 1968.

Publications Industrial Research Center 1992). Manufacturers' licenses also permit them to sell guns directly to the public through operating or owning dealerships that sell guns, but this does not occur often. Transactions occurring through FFLs make up the "primary market" for firearms. A "secondary market" also exists for previously owned guns, which comprises transactions involving unlicensed people who can act as both buyers and sellers. Estimates based on the fraction of guns in private hands that were acquired "used" suggest that there are roughly as many transactions of new guns through sales in the primary market as there are transactions of used guns in the secondary market (Cook and Molliconi 1995, p. 70).

Interplay of the Primary and Secondary Markets with Respect to Diversion

Virtually all guns used in crime first pass through the primary market distribution system, originating with a licensed dealer (BATF 1997). In one study, for example, 94% of the surveyed handguns used in serious crimes had been initially sold by retail dealers in the primary distribution system structure (BATF 1976). Thus, the operations of the primary

marketing and distribution channel system for firearms and their sale within the secondary market are intertwined.

In contrast to popular lay conceptions, many of the firearms used in crimes are "young guns," or those that move fairly quickly from factories to crime scenes, traversing the legal channel into illegal markets along the way. For example, one "Time to Crime" analysis showed that more than 30,000 of the crime guns seized were two years old or less (BATF 1997, see also Kairys 2000). Most recently, testimony in the NAACP's lawsuit against the industry calculated that at least 15% of handguns that had been produced or imported during 1995 were found to have been used in a crime within the next five years (Siebel 2003).⁷ Studying the respective roles of the primary and secondary markets in

⁷This figure may vary as a function of both the year sold and the number of years included in the calculation. For example, according to one study, more than 600,000 handguns sold in the United States in 1989 (approximately 24% of the total sold in that year) were used in the commission of a crime before the end of 1997. This figure rose to an estimate of more than 760,000 handguns sold in 1993 that were used in a crime before the end of 1997 (approximately 20% of the total number of guns sold; Barnes 2002).

contributing to crime, a leading researcher recently observed, “Instead of a market predominantly comprising petty criminals selling stolen guns, we encountered a setting rich with licensed and unlicensed entrepreneurs who bought guns directly from licensed sources in order to satisfy their customers’ craving for new, large caliber pistols. Episodes of large scale, commercialized gun diversion seemed commonplace” (Wachtel 1998, p. 220). Thus, the primary distribution system is of interest to our analysis.

How Diversion Occurs in the Channels of Distribution

As we describe in Table 3, though other channels exist, there are six primary sources for firearms diversion.⁸ Magnitudes for these were measured by the BATF (2000d) in its report “Following the Gun,” which used its crime-gun-tracing system to analyze more than 1500 recent gun-trafficking investigations, involving a total of more than 84,000 firearms diverted from legal to illegal commerce. Of these 84,000 diverted firearms (note that multiple forms can exist with the same gun, so totals will exceed 84,000), the BATF found the following:

⁸This basic classification system arose from the marketing analysis we use in this article, and it is now used by the Brady Center and others concerned with diversion problems.

Table 3. Six Major Channels for Firearms Diversion

Sources	Description
Gun shows	Temporary and informal gathering of purchasers and sellers for the purpose of conducting firearms transactions.
Straw man purchases	Purchasers who buy guns on behalf of those who are prohibited because of their age, criminal record, or other status.
Multiple sales	Two or more firearms purchased by an unlicensed person within a five-day period.
Theft	Firearms stolen from commercial places, common carriers, and other locations.
Nonstore/ nonstocking FFL dealers	Licensed firearms marketers known as “basement bandits,” “kitchen table” dealers, and “car trunk” dealers who operate out of their residences, vehicles, and other noncommercial premises to sell firearms to prohibited purchasers.
Unlicensed sellers, scofflaws, and unscrupulous or corrupt FFLs	Unlicensed “street” dealers who buy firearms with the purpose of reselling them to prohibited purchasers or licensed firearms marketers who are allied with the criminal element and sell to prohibited purchasers.

- Gun shows were a major source, accounting for 26,000 diverted firearms.⁹
- “Straw man purchasers,” who buy guns on behalf of those who are prohibited because of their age or criminal record, were also frequently involved, accounting for approximately 26,000 diverted firearms.
- Unlicensed sellers were involved in dealing approximately 23,000 diverted firearms (some gun traffickers act as arbiters, for example, buying guns in loosely regulated jurisdictions and reselling them elsewhere; Cook and Cole 1996).
- Multiple sales, which can be a strong indicator of gun-trafficking purposes, were not separated out in this study. However, a 1999 crime-gun-tracing study in 32 cities showed that multiple sales accounted for 22% of all handguns sold and traced in 1999 (BATF 2000b). A separate BATF (1999) tracing study also showed that multiple sales leading to gun trafficking are the most significant source of guns for juvenile and youth offenders.
- Theft from FFLs, residences, and common carriers accounted for another 9000 firearms.
- Some FFLs were found to have been willing to sell “under the counter” to prohibited purchasers. These dealers are sometimes termed “unscrupulous” and “scofflaws.” Some FFLs that operate without retail premises (e.g., nonstore) or on a nonstocking basis and engage in this practice are sometimes termed “car trunk,” “kitchen table,” or “basement bandits.” In total, about half of the diverted firearms in this study (approximately 40,000) were associated with FFLs in one or more of the preceding manners (sometimes innocently and sometimes not).

A Key Element of the Channel System: The Special Role of FFLs

There are more than 100,000 FFLs in the country; they have access to potentially large volumes of firearms and thus are of central importance to the diversion issue. Statistics are clear that only a small proportion of FFLs act in ways that serve to circumvent the intent of the laws. For example, a report from a member of the House of Representatives found that approximately 1% of all FFLs were the source of 45% of the crime guns traced in a recent year (Schumer 1999). However, the picture is complex. In two-thirds of the cases in the BATF (2000a) study, multiple FFLs were involved in the diversion. A more recent study of handgun dealers in the 20 largest cities in the United States found that though dealers were less willing to make a sale when the sale would be illegal, more than half were willing to sell a handgun even if it would be illegal to do so (Sorensen and Vittes 2003).

⁹More than 4000 gun shows are advertised each year in the United States. Gun shows are a special form of the retail sale of firearms in which both FFL and unlicensed sellers sell at gun shows; thus, buyers can participate in either the primary or the secondary market. In general, gun shows are open to the public, often run over a two-day period on weekends, and can draw an average attendance of 2500 to 5000 potential buyers. Guns are displayed on tables, with fees for seller participation ranging from \$5 to \$50 per table (between 50 and 2000 tables are often in use, depending on the size of the show). Some sellers travel from gun show to gun show, dealing their products at shows only (Saporito 1998). The atmosphere of gun shows can be characterized as casual; some people do not even use tables, and some are reported to display signs that read “no background check” (USDOT, USDOJ, and BATF 1999).

Federal firearms licensees may be associated with diversion in several ways. One such way, as in the case of the scofflaw or the unscrupulous dealer, is to become directly allied with criminals to engage in illegal sales (e.g., Spiegler and Sweeney 1975). More indirectly, FFL dealers also may contribute to diversion by not being alert to avert straw purchase transactions, by not being cognizant of the association of multiple firearms sales and their criminal use, and by not being sensitive to other factors related to diversion (Wachtel 1998). Finally, FFL dealers may contribute to diversion by ignoring BATF regulations and by not being cooperative in maintaining records that are helpful to others interested in limiting its risk (Pierce, Briggs, and Carlson 1995; USDOJ 2001). Examples of other factors related to diversion include regulatory unevenness, geographic patterns, price, and obliterated serial numbers. Thus, there are several avenues for diversion and potential areas for safeguards to be applied at this stage and at earlier channel stages. We now consider these in the marketing framework applied to diversion.

Countermarketing and Demarketing in a Distribution Channel: A Channel Framework for Firearms Diversion

Our framework is set within the judicial system to provide a conceptual understanding that will be useful in the operations of the legal process, including informing the process of discovery, aiding in the assessment of liability, and assisting in the crafting of an appropriate remedy (if needed). In this section, we begin with the fundamental concepts of marketing strategy. Then, we extend channels-of-distribution theories to the firearms industry, emerging with a countermarketing and demarketing channel management framework that describes and illustrates the possible roles of marketers in preventing firearms diversion and the types of safeguards that might be used to address the problem. The courts and those involved in the ongoing lawsuits within the industry should find these concepts and analysis helpful as they deliberate the merits of the lawsuits and search for possible remedies.

Countermarketing and Demarketing as Fundamental Marketing Strategies

A narrow view of marketing is that it is a field primarily concerned with stimulating demand, undertaking efforts such as advertising, promotions, and personal selling to increase sales. However, as Kotler (1973, p. 56) cogently noted many years ago,

The popular image of the marketer is [of] a professional whose job is to create and maintain demand for something. Unfortunately, this is too limited a view of the range of marketing challenges.... In fact, it covers only two of the eight important and distinct marketing tasks.... [U]nselling [a form of countermarketing and demarketing] has as much social justification in a democracy as does selling.

According to Kotler, “unwholesome demand” can represent the result of concerns for consumer welfare, public welfare, or the managerial welfare of the firm that is supplying a product or service. Classic examples include many of the

so-called vice products: alcohol, cigarettes, illegal drugs, and other products for which regulators find it difficult to enforce an outright ban or proper use (Kinneer and Frey 1979). In each case, certain groups of consumers who demand such products are prohibited from purchasing them because of the consumer’s status, his or her method of acquisition, or his or her intended use of the product.

In this framework, the presence of unwholesome demand calls for strategies of demarketing and countermarketing (Gautier 2001; Harvey and Kerin 1977; Kotler 1973; Kotler and Levy 1971). Demarketing involves discouraging demand in general or on the part of a certain class of customers, either temporarily or on a continuing basis. Countermarketing is a stronger strategy, representing total repudiation of the relevant demand by getting rid of unwanted customers or by preventing certain types of transactions. Selectivity is a hallmark of these strategies because they are geared only to portions of the potential customer base (Cullwick 1975; Lepisto 1983). As with traditional marketing strategies, demarketing and countermarketing are amenable to development across the marketing mix. For example, prices can be raised; product quality, service, and promotion can be reduced; and/or convenience can be altered (Gerstner, Hess, and Chu 1993).

Given that the problems of firearms diversion involve unwholesome demand arising in various ways within the distribution channels of the firearms industry, the concepts of demand management, countermarketing, and demarketing can provide important insights for the courts to consider. In addition, the basic elements of channel management also have application because the distribution channel represents a key marketing function through which these concepts could be implemented. Table 4 integrates the concepts of countermarketing and demarketing with key elements for channel management; as such, it reflects our framework and presents several distribution-oriented and diversion-specific safeguards for addressing the problem of firearms diversion. The columns of Table 4 reflect the primary means by which diversion occurs (e.g., gun shows, straw purchases). The rows of Table 4 represent four basic elements for channel management; we explain this further in the subsequent discussions.

The overall distribution-based framework is grounded in considerable marketing channel theory (e.g., Stern, El-Ansary, and Coughlan 1996). Its elements include the following:

- The necessary information systems and information for identifying instances of firearms diversion and for facilitating coordination to help limit it,
- Relationship management approaches for selecting and coordinating intermediary relationships within the system to aid in the reduction of diversion,
- Broader issues of the basic structure of the overall distribution system configuration and how this could be used to limit diversion, and
- Aspects of channel governance that are deployed and relied on to administer such efforts.

Although our emphasis is on possible diversion safeguards, note that for the judicial system, consideration of the points in this framework will also provide an enhanced under-

Table 4. The Channel Framework: Potential Safeguards Against Diversion

Marketing Channel Management Framework	Gun Shows	Straw Purchases and Multiple Sales ^a	Theft	Nonstore and Nonstocking Dealers	Unlicensed Sellers, Scofflaws, and Unscrupulous or Corrupt FFLs
Data and Information Systems <ul style="list-style-type: none"> •Data •Information systems 	Background checks for all gun show sales Maintenance and access to information concerning gun show sales	Mandatory record keeping of purchases sufficient to monitor multiple sales Access to information about multiple sales	Mandatory inventory tracking plan, including electronic recording of information Access to information about inventory tracking procedures and operations Mandatory reporting procedures for shortages and lost or stolen firearms	Access to information about the nature of premise, location, hours of operation, and merchandising configurations Photographs of distributor and dealer premises	Access to distributor and dealer licenses and permits Maintenance and access to information about the nature of hiring practices, qualifications, and training for employees Mandatory retention/reporting of BATF trace requests
Relationship Management <ul style="list-style-type: none"> •Selection •Management •Modification/termination 	Require all firearms transactions at guns shows to go through FFLs Strict control of firearms at gun shows including inventory and display Monitoring and compliance inspections	Training on the identification and deterrence of straw man purchase and multiple purchase scenarios Restrictions on multiple sales (e.g., limiting purchases to one per month per buyer) Monitoring and compliance inspections	Require distributors and dealers to have inventory management and security plan Restricted access to firearms and background checks of employees Guidelines and training on inventory management and safe storage Mandatory liability insurance Monitoring and compliance inspections Use of secure carriers and no discerning shipment labels	Require distributors and dealers to have firearms as their primary business Require dealers to maintain a retail place of business Minimum product line and inventory levels for distributors and dealers Monitoring and compliance inspections	Certification of compliance with state and local law and licensing provisions Verification of FFL status before firearm transfer Background check on all employees Mandatory training on laws and regulations Monitoring and compliance inspections Termination of distributors and dealers who violate the law or fail to comply with safeguard requirements

Table 4. Continued

Marketing Channel Management Framework	Gun Shows	Straw Purchases and Multiple Sales ^a	Theft	Nonstore and Nonstocking Dealers	Unlicensed Sellers, Scofflaws, and Unscrupulous or Corrupt FFLs
Structure <ul style="list-style-type: none"> •Channel length •Channel width •Number and type of channels 	No sales to distributors and dealers who sell at gun shows	Reduce the number of intermediaries overall Sales only through direct channels	Reduce the number of intermediaries overall Sales only through direct channels	No sales to distributors and dealers who do not operate from a commercial premise Sales to only stocking dealers	No sales to people with known criminal indictments or high levels of crime guns Sales through direct channels
Governance <ul style="list-style-type: none"> •Corporate •Contractual •Administered 	Authorized distributors and dealers Distributor agreements Code of conduct for distributors and dealers	Authorized distributors and dealers Distributor agreements Code of conduct for distributors and dealers	Authorized distributors and dealers Distributor agreements Code of conduct for distributors and dealers	No sales to Internet dealers	Take on role of intermediary No dealer-to-dealer transfers Corporate-owned distributors and dealers Distributor agreements Code of conduct for distributors and dealers

^aAs the potential safeguards for these two columns are equivalent, they have been combined here.

standing of firearms diversion, the roles of marketers in safeguarding against its occurrence, and the assessment of marketers' conduct in relation to the problem.

Element 1: Information Systems and Firearms Diversion

The first row of Table 4 reflects possible safeguards associated with this element of distribution channel management. In general, marketing scholars strongly endorse the view that systematic availability of relevant data allows for better control of business systems (e.g., Malhotra 2004; Sudman and Blair 1998). It is clear that diversion of firearms is occurring. However, the discovery of exactly how, when, and where lies in the province of distribution channel information systems, which entail the collection, creation, management, and communication of information to coordinate the overall channel effort. In general, they are considered to be of four types (see Michman and Sibley 1979; Piercy and Evans 1983; Sisodia 1992; Stern, El Ansary, and Coughlan 1996; Talvinen 1995; Walters 1974):

1. Data gathering and storage systems, or database systems, are the backbone of an organizational information system. These systems provide structure for retrieval and basic manipulation of data into useful information.
2. Information development and reporting systems access organizational records to provide reports to resolve marketing challenges. They comprise computer systems, software, and associated technologies that enable information to be relayed among channel members electronically.
3. Decision support systems involve models, expert systems, and advanced statistical procedures to aid in decision making. In general, these systems solve problems and provide a formalized means of analysis.
4. Monitoring and control systems provide continuous monitoring of personnel, marketing activities, and performance against plans. These systems enable marketers to identify problems and opportunities in the marketplace and to check progress toward objectives.

As we show in the first row of Table 4, the four types of information systems are capable of providing different inputs for safeguarding against firearms diversion. For example, data gathering and storage (database) systems could be used to collect and archive both purchases and relevant information about employees' and customers' backgrounds (while attending to privacy concerns). At the distributor and/or retail levels, this information could help ensure that an employee has continuing standing to sell firearms, that a potential customer is not a member of a prohibited market segment, and/or that a particular proposed transaction is not part of a multiple sales effort intended for prohibited markets.

With respect to diversion through thefts, improved information systems again offer potential. Reporting systems for stolen firearms can clearly facilitate the identification of any distribution channel members having particular theft problems. Monitoring and control systems for inventory can also be used to track theft more effectively, and a secure shipping tracking system can be further used to safeguard against theft from common carriers. At the retail level, visual and electronic security monitoring systems can provide records

of the display floor activities to provide an additional mechanism for monitoring and controlling transactions.

A Special Role for Information Systems: BATF Firearms Trace Requests

As we noted previously, the BATF operates an ongoing information system that traces guns used in crimes. The tracing process begins when a law enforcement official recovers a firearm, usually from a crime scene or from the possession of a suspect, felon, or other prohibited person, and the law enforcement agency submits a trace request to the BATF's National Tracing Center. The trace information identifies the firearm (serial number, firearm type, manufacturer or importer, and caliber), the individual in possession of the firearm, the recovery location, and the criminal offense (BATF 2000a). Tracing data are useful for linking suspects to a firearm in a criminal investigation, identifying potential traffickers, determining whether sellers of crime guns are licensed, and detecting in-state and interstate patterns in the sources and kinds of crime guns.

However, despite the requirement for FFLs to respond accurately to trace requests within 24 hours (in accordance with the Gun Control Act of 1968), firearms traces currently identify only the first retail dealer for approximately 60% of the trace requests and the first retail purchaser for approximately 40% of the trace requests (BATF 2000a). Improvements to these performance levels for this important information system, including greater FFL compliance, offer further potential for addressing firearms diversion. Beyond this, other forms of information offer further avenues for addressing firearms diversion, especially in terms of creating an efficient and effective distribution channel among interdependent, yet independent business entities. Because protection of privacy may be a concern in this context, care is needed in how such information is managed. However, some examples of useful data that can be collected, retained, and/or made available (note that some data currently exist, but they are not easily made available to other channel members) include (1) selected purchase transaction data (e.g., dates of retail purchases); (2) BATF trace request logs, audit and enforcement action notices, and license revocation notices; (3) employment policy reports about hiring and training practices at each level of the distribution channel; (4) policies from every channel member about protecting against illegal sales; (5) security and insurance coverage information from every channel member about protection against thefts; (6) inventory tracking procedures and other relevant information about operations from each channel member; and, where possible, (7) information from every channel member that reflects the nature of customers and product sales patterns.

Element 2: Relationship Management and Diversion Protection

Distribution channels for firearms can be complex, typically fanning out from a manufacturer to several distributors and then to hundreds or thousands of FFL dealers. Because each entity is likely to be an independent firm or person, coordination efforts must be taken to achieve an efficient and effective channel system of operations. Thus, diversion

problems may, in part, be a by-product of a lack of coordination within a system. Such coordination is within the purview of “relationship management,” which studies the stages through which business exchange relationships evolve and the attendant distribution management tasks involved (e.g., Dwyer, Schurr, and Oh 1987; Heide 1994; Partvatiyar and Sheth 2000; Sathe 1985). Our framework identifies three key stages: the selection of distribution partners; the management of relationships across time; and, where necessary, modification or termination of those intermediary relationships that do not meet established performance goals. As we show in the second row of Table 4, each stage of relationship management provides avenues for developing and implementing safeguards.

Controlling Diversion Through Selection, Modification, and Termination

If, as we expect, a relatively small proportion of dealers are accounting for a lion’s share of the diversion problem, the selection and termination phases of channel relationship management are crucial for addressing this problem. As we show in Table 4, several safeguarding steps are possible. For example, manufacturers can apply a countermarketing/demarketing selection policy to partner only with those distributors and dealers who meet certain safeguarding criteria, such as only those dealers whose primary line of business involves firearms (e.g., stocking dealers) or those who operate from a storefront and are regularly open to the public.

After channel members have been selected, the modification/termination phase can put teeth into the selection policy, either by insisting on adjustments when violations have occurred or by terminating the offender’s membership in future channel operations. Much of the current diversion would be hindered if firearms were not in ready supply from some manufacturer and distributor sources.

Controlling Diversion Through the Management of Channel Relationships

Less draconian measures than termination are also feasible for minimizing diversion, and these can be addressed through the channel management process. As we show in Table 4, several options arise here. For example, to minimize theft, channel members can require inventory and security plans, conduct background checks of all employees, plan for restricted access to the firearms themselves, and provide training and guidelines for safe storage and inventory control. Liability insurance and shipment methods involving secure packaging and carriers can also be mandated. Finally, theft monitoring and compliance inspections by manufacturers and distributors can be carried out on a systematic basis.

To restrict gun show diversion, manufacturers and other members of a channel can work to devise a strict control program for the inventory and display of firearms together with a program of monitoring and compliance inspections at the shows. At the extreme (as is now required in California), all gun show transactions can be required to go through FFLs. To restrict problems from nonstore and nonstocking dealers, channels can require a retail place of business for a dealer to participate and/or establish minimum standards for

product inventory levels. Finally, to help control diversion from unscrupulous or scofflaw dealers (licensed or unlicensed), several managerial options are available. Verifications of appropriate federal and local licenses can be undertaken before establishing the relationship. The current status of each customer can also be routinely checked before shipments of the firearms themselves. As we mentioned previously, employee background checks and mandatory training on laws and regulations can be provided as appropriate. Strict requirements of channel partners in relation to how and where firearms are displayed and stored as well as other security measures can be established. Finally, monitoring and compliance inspections can be conducted to ensure that the system is operating as intended.

Element 3: Channel Structure and Firearms Diversion

As we show in the third row of Table 4, larger aspects of channel structure may also be used to control against diversion. For example, the overall architecture of a channel system combines dimensions such as length and width (e.g., Balderson 1964; Harrell 2002; Mallen 1977; Michman and Sibley 1979; Rosenbloom 1987; Walters 1974). As we noted previously, channels for firearms tend to be of intermediate length, and manufacturers, distributors, and numerous dealers are involved. As such, a structure-based countermarketing/demarketing measure involves shortening the length of the channel system through reducing the number of intermediary levels involved. In terms of firearms diversion, shortening the length of the channel system for safeguarding purposes would involve more responsible manufacturers and/or distributors taking on the role of other, less responsible intermediaries or selling to consumers directly.

Channel width, also termed intensity or breadth, refers to the number of intermediaries at each level, as is typified by the common archetypes of intensive (the use of as many outlets as possible), selective (not all possible intermediaries at a particular level are used, but those included have been carefully chosen), and exclusive (a highly selective pattern in which only one intermediary in a particular market area is used; e.g., Rosenbloom 1987) distribution. A basic channel width countermarketing/demarketing strategy would increase control over processes and destinations by moving toward more selective and exclusive channel structures. More specifically, firearms manufacturers and distributors can use channel width decisions for safeguarding against diversion through refusing to sell to, for example, distributors and dealers who sell at gun shows, those that sell on the Internet, those without retail locations, or those that fall below minimal stocking level standards (Cook and Molliconi 1995; Painter 1994).

Element 4: Broader Issues of Channel Governance

The fourth row of Table 4 reflects safeguarding options suggested by considering the area of channel governance. As a marketing channel concept, governance encompasses the approaches that parties use to organize, coordinate, and administer their distribution systems (Gundlach 1994). Common governance approaches include the following:

- Corporate governance with reliance on ownership-based mechanisms; this includes forward integration such that manufacturers own and/or operate wholesale and/or retail units and backward integration such that a retailer or wholesaler owns or operates its own manufacturing units (Churchill and Peter 1998; Kotler and Armstrong 2004; Rosenbloom 1987; Stern, El-Ansary, and Coughlan 1996);
- Contractual governance, which involves the use of legal contracts and other legitimate means for administering a distribution system, such as franchising arrangements, retail cooperative organizations, wholesaler-sponsored voluntary chains, and distributor agreements (Stern, El-Ansary, and Coughlan 1996); and
- Administered governance, which involves the use of power and norms in coordinating a distribution system; power is the ability of one channel member to make or persuade another channel member to do something it otherwise would not have done, and norms are expectations about behavior that are at least partially shared by distribution channel members and therefore provide governance authority (Churchill and Peter 1998; Heide 1994; Kotler and Armstrong 2004; Rosenbloom 1987; Stern, El-Ansary, and Coughlan 1996).

At one extreme, the strategy of vertical integration would involve, for example, a firearms manufacturer developing corporate-owned distributors and dealers. Conversely, contractual safeguards are another option and involve the use of distributor agreements in which manufacturers and distributors explicitly incorporate and enforce safeguards that address operating systems and standards, training, quality control of the marketing processes, and so forth. In this respect, authorized firearms distributors and dealers and firearms dealer programs may be particularly useful mechanisms to accomplish such safeguards.

Finally, administered forms of safeguards may also be relied on, exerting influence and control (e.g., power) over downstream channel members to institute safeguards and ensure compliance over time. As we show in Table 4, an option that would cover all diversion sources would involve having channel members sign a “code of conduct” for controlling the diversion of firearms (USDOJ 2001).

Discussion

The tragedy of firearms-related violence continues to be a major societal threat to human life and health in the United States. In 1997, President Clinton identified the ease with which criminals, the mentally deranged, and children can acquire guns as a “major national problem,” and he established a national goal of making it more difficult for guns in legitimate distribution to pass into the illegal market (BATF 1997, p. 1). More recently, the threat posed by trained terrorists finding easy access to illegal firearms within the borders of the United States has added to concerns.

Resolving Firearms Diversion: Self-Regulatory Developments and Implications

To address the concerns about firearms diversion, apart from the ongoing lawsuits against members of the industry and other initiatives, actions to resolve the problem intensified through an unexpected set of developments in the self-regulatory realm several years ago. These developments bear on the considerations we explore herein and on the ongoing lawsuits, and therefore we briefly summarize them.

In 2000, the industry’s largest manufacturer, Smith & Wesson, entered into an agreement promising to implement many distribution-related safeguards of the sorts we present in Table 4. On the other side of the agreement were various municipalities, the USDOT (i.e., the BATF), the U.S. Department of Housing and Urban Development, and the states of Connecticut and New York. In exchange for implementing these safeguards, the firm would receive relief from pending lawsuits and future litigation, in addition to a favorable image from many government officials, who may have control over future purchasing arrangements (Adams 2004). Although many believed that the Smith & Wesson agreement was a breakthrough for public safety (e.g., President Clinton and Washington D.C. Mayor Williams), in general, gun control opponents expressed strong disapproval. Negative sentiment from firearms dealers and many gun owners became a much publicized issue, sales of Smith & Wesson declined, business difficulties mounted, and Smith & Wesson was sold to a new owner in 2001, at which point the agreement was rescinded (Adams 2004; Freebairn 2002).

Together with the multiple other initiatives for resolving the problem of firearms diversion, the experience of Smith & Wesson yields five key implications that are particularly pertinent to the current marketing channel management framework and analysis:

1. The industry context appears to be such that voluntary countermarketing and demarketing efforts by an individual firm might simply not be feasible, given the punishing reactions by Smith & Wesson’s customers and competitors.
2. Given history, current challenges, and the foreseeable future of the BATF, no dramatically increased inroads against diversion appear likely from the regulatory and law enforcement fronts.
3. The lawsuits we discuss in this article contemplate remedies that would require firms to undertake channel safeguards and to cooperate more fully with the BATF in its monitoring and investigatory activities against firearms diversion.
4. For the courts to properly understand and appraise the actions of the various members of the firearms industry and for any appropriate remedy options to be properly considered, an enhanced understanding of the normative foundations of marketing, the nature of marketing channel management, and the types of distribution-oriented and diversion-specific safeguards is necessary.
5. The framework we provide herein is conceptually grounded, theoretically sound, and particularly relevant to these needs. In general, the types of identified safeguards we discuss in our analysis and summarize in Table 4 appear to be feasible for operations in this industry. A leading manufacturer, Smith & Wesson, was willing to undertake many of them in its earlier agreement. In addition, in August 2003, two California gun dealers and three gun distributors agreed to a settlement with San Francisco and 11 other California cities and counties in return for being released from lawsuits brought by the municipalities. In this settlement, the dealers agreed to undertake the following steps: stop selling firearms at gun shows, implement an enhanced inventory tracking plan to ensure that firearms are not lost or stolen, annually train all employees on how to recognize and block sales to straw purchasers, maintain all BATF firearms trace requests electronically, and provide the requested information to gun manufacturers and distributors to help them monitor the conduct of dealers who sell their firearms. The distributors agreed to undertake additional

steps to verify dealer licenses, to restrict sales of assault weapons, and to donate \$50,000 to compensate plaintiffs for some of the costs of the lawsuits (Chiang 2003).

Such an appraisal suggests that actions in the public policy domain will likely continue as a resolution is sought to alleviate concerns about the problem of firearms diversion. Over time, it could be that the U.S. legislative branch may determine that industry immunization is the best policy for this country. Alternately, other public policy initiatives may arise and ultimately address firearms diversion.

Currently, however, judicial deliberations in the form of class and individual lawsuits continue with their charge to determine whether stricter safeguarding steps should be legally required of marketers in this arena. In these lawsuits, the legal information needs are complex, and a court's decision must be based on particular and detailed evidence from the industry. However, to the extent that such information involves distribution, the accumulation of such evidence and its interpretation should be guided by relevant concepts, theory, and analysis from within the field of marketing.

In this regard, marketing as demand management and countermarketing and demarketing are foundational concepts and legitimate strategies of practice in the field of marketing. Strategies of countermarketing and demarketing are being pursued in many industries that convey dangerous or risky products and/or industries that have prohibited customer groups. For example, Bradford and Gundlach (2005) report that the pyrotechnic industry in Texas voluntarily removed from distribution "stick rockets" and "missiles with fins and rudders" (even though these products constituted 40% of all retail sales), leading to a more than 90% reduction in fireworks-related fires compared with previous years. In the chemical industry's "Responsible Care" program, members are given awards for achieving 25% or more reductions in incident rates, following a multipronged program for reducing problems. Demarketing has also been an issue for the tobacco industry; a recent initiative sponsored by the Coalition for Responsible Tobacco Retailing provides support materials, training, customer handouts, and hundreds of training sessions in which clerks learn to card for illegal purchasers. For added incentives, the program includes termination of benefits to retailers that are fined or convicted for selling tobacco to minors (see <http://wecard.org/>). The alcohol beverage industry also has created initiatives to restrict underage sales, straw man purchases, and on-site sales to customers who may potentially abuse these products. Participating retailers in the "Being a Responsible Server" program, for example, pay to be included in a secret shopper-style program in which efforts to make illegal purchases are randomly conducted.

Our integration of countermarketing and demarketing into the framework of channel management illustrates distribution-based elements of business operations through which it can be implemented, allowing for the identification of safeguarding possibilities to emerge. Considered as such, the countermarketing/demarketing channel/diversion framework represents a set of inputs from the field of marketing that can and should contribute to the understanding of those in the judicial system who are charged with making crucial

judgments that will determine the future of this industry and its impacts on society.¹⁰

Conclusion

Firearms violence remains a national tragedy, and diversion is a significant source of guns used in crime. The description, conceptualization, and framework we offer in this article represents a targeted incorporation of understanding and insights from marketing that should be helpful toward the goal of reducing firearms diversion in the marketplace. We encourage the field of marketing to engage in further steps to assist those involved in public policy, including the courts as we focus on herein, in addressing this important societal goal.

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¹⁰Initial receptivity to this framework by policy makers who wrestle with these issues has been positive. In the words of the Deputy Corporation Counsel of the City of Chicago, for example, "It is terrifically interesting.... I find it to be a very powerful analysis" (Rosenthal 2004).

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