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THE GUN SHOW LOOPHOLE AND CRIME



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gunsafety





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Introduction

Since 1993, with the passage of the Brady Law, each of the more than 80,000 individuals and businesses federally licensed to sell firearms must perform background checks whenever and wherever they sell guns. But unlicensed individuals are under no obligation to perform background checks when they sell their private collection of firearms. The law was meant to differentiate between those who sell firearms as a business and those who occasionally sell a firearm to a friend, neighbor, or family member.

An unintended consequence of the law is the so-called “gun show loophole.” At gun shows, licensed dealers must perform background checks on all purchasers of firearms, but a growing number of unlicensed sellers who claim to be selling parts of their private collection do not. Thus, many “occasional” sellers of firearms have become habitual sellers at weekend gun shows. The “private collection” of firearms from certain unlicensed sellers has begun to include new handguns still in the box. This loophole has created a situation at over one thousand gun shows each year where sellers at one table must perform background checks, while sellers offering the same firearms at another table do not. According to the National Rifle Association, “hundreds of thousands” of firearms are sold without background checks each year at gun shows by unlicensed sellers.¹

The gun show loophole gained notoriety in 1999 when underage students at Columbine High School succeeded in obtaining three firearms at area gun shows where background checks were not required. The shootings at Columbine High School were the worst student-on-student massacre in American history. Since then, rightly or wrongly, gun shows and the gun show loophole have been associated with school shootings at Columbine.

“Unlicensed individuals are under no obligation to perform background checks when they sell their private collection of firearms.”

”

[1] James Jay Baker, Executive Director, National Rifle Association, in a letter to Congress, April 23, 2001.

This report, "The Gun Show Loophole and Crime," seeks to answer the main questions concerning gun shows and the gun show loophole. Is there conclusive evidence that the gun show loophole is a contributor to crime in America? Is there a difference in gun trafficking patterns between states that have closed the gun show loophole on their own and those that have not? Is there any truth to the argument raised by opponents of closing the gun show loophole that requiring background checks is detrimental to gun show business operators?

There have been surprisingly few attempts to gauge the impact of the gun show loophole. Perhaps the most important is a June 2000 report by the Bureau of Alcohol, Tobacco, and Firearms which called gun shows "a major trafficking channel," and implicated them as the second leading source of firearms recovered in illegal gun trafficking investigations.² But this report did not differentiate between gun shows in states that have closed the gun show loophole and those that have not.

A Bureau of Justice Statistics survey of state and federal prisoners is commonly cited by those opposed to requiring criminal background checks for all firearm sales at gun shows. This 1997 survey of how state and federal prisoners obtained the firearm they used in the crime for which they were incarcerated found that only 3.4% of prisoners named gun shows or flea markets as the source.³ But this statistic is misleading. The gun show loophole did not exist until the Brady Law passed in December, 1993; so any prisoner in jail before then, or who acquired a firearm before that date, would not need to go to a gun show to avoid a background check. In addition, a subsequent ATF report on gun trafficking has concluded that gun shows are a major trafficking source, which means that there is often a second sale to a street criminal after the firearm is bought by a trafficker at a gun show.

For example, federal agents last October arrested Thomas Timms of Georgia who was found to have 147 firearms and 60,000 rounds of ammunition in his home. Guns sold by Timms to traffickers at Georgia gun shows had been recovered in crimes committed in New York, New Jersey, Michigan, and Washington, DC.⁴ None of the local criminals in these states would know that the origin of their crime gun was a Georgia gun show.

[2] BATF, "Following the Gun: Enforcing Federal Laws Against Firearms Traffickers," June 2000.

[3] U.S. Department of Justice, "Federal Firearm Offenders, 1992-1998," June 2000.

[4] *Augusta Chronicle*, "Firearms Sales Bond Hearing Set for Suspect," October 19, 2003.

Methodology

This report analyzes data obtained through congressional sources from the Bureau of Alcohol, Tobacco, Firearms, and Explosives on raw crime gun trace data for crimes committed in 2001. The report specifically analyzes 36,828 crime gun traces in which the gun was originally bought in one state, but used in crime in another. Federal law enforcement believes that when a gun is recovered in a state other than where it was bought, it is a telltale sign of illegal gun trafficking.

The report uses this data to discern the differences in gun trafficking patterns between the 17 states that have closed the gun show loophole by requiring a criminal background check, license, or permit to purchase a handgun and the 33 states that have no such requirements.

Findings and Conclusions

The report uncovered three major findings:

States that have failed to close the gun show loophole are a major source of interstate crime guns.

- Of the 36,828 crime gun traces in which the crime was committed in a state other than where the gun was bought, 27,205 of the guns originated in loophole-open states and 9,623 from loophole-closed states.
- When population is factored in, out-of-state crime guns are nearly three times as likely to come from loophole-open states than loophole-closed states (19.4 crime guns per 100,000 population compared to 7.1 per 100,000).
- All 15 of the top per capita crime gun exporting states have failed to close the gun show loophole.
- Of the 15 states with the lowest per capita crime gun exporting rates, 11 states require at least a background check, license or permit to purchase a handgun from an unlicensed seller at gun shows.

States that have closed the gun show loophole are being flooded with crime guns from states that have left this loophole open.

- In states where the gun show loophole is closed, 42% of guns traced to crime originated from outside of the state, compared to 25% for loophole-open states.
- All 10 of the leading export states of crime guns to Illinois criminals are loophole-open states.
- All 10 of the leading export states of crime guns to Michigan criminals are loophole-open states.
- All 5 of the leading export states of crime guns to Massachusetts criminals are loophole-open states.
- 4 of the 5 leading export states of crime guns to New York criminals are loophole-open states.
- 5 of the 6 leading export states of crime guns to Missouri criminals are loophole-open states.

Closing the gun show loophole has no negative impact, and possibly a positive effect on gun show business.

- On average, there were more gun shows held last year in states that have closed the gun show loophole (45) than in loophole-open states (41).
- Five of the ten states that hosted the most gun shows last year have closed the gun show loophole - Pennsylvania (2nd), California (5th), North Carolina (7th), Illinois (8th), and Michigan (10th).

Recommendation:

While this loophole has been most associated with one particular crime - the massacre in 1999 at Columbine High School - this loophole may be a far greater factor in ordinary street crimes than previously thought. In the short period of time in which the gun show loophole has existed, traffickers have seemed to have figured out how to exploit this flaw in the law to supply criminals with guns. The evidence is conclusive that whether or not a state has closed the gun show loophole is a threshold as to whether that state will be a major source of crime guns or not.

Closing this loophole nationally would eliminate the last major commercial source of firearms available to people who seek to avoid a background check when purchasing firearms. Passing a law to close the gun show loophole on the federal level would not have a detrimental effect on gun show operators, but would have a major impact on reducing gun trafficking.

FINDING
1

States that have failed to close the gun show loophole are a major source of interstate crime guns.

“Crime guns do come from gun shows. That's been documented.”

— ATF Special Agent Jeff Fulton upon the arrest of five individuals and the discovery of 572 guns in raids of unlicensed sellers at gun shows in Missouri, Kansas, Kentucky and Oklahoma.⁵

With the passage of the Brady Law in 1993, licensed firearms dealers are required to perform background checks for all buyers of firearms wherever a gun is sold. But the federal law does not require the same checks for unlicensed sellers, creating a distinction between those who sell firearms as a business and those who occasionally sell firearms from their own private collections.

At gun shows, the “occasional” seller has too often become a regular merchant at weekend events. “Private” collections sometimes include handguns still in the box or multiple versions of the same firearm. That is why, according to the National Rifle Association, “hundreds of thousands” of firearm sales occur without background checks each year at gun shows.⁶

States are permitted to pass their own gun safety laws beyond those approved by the federal government and seventeen states have closed the gun show loophole by requiring a background check, license, or permit to purchase handguns at gun shows.* Thirty-three states do not require any type of background check or permit to buy from unlicensed sellers at gun shows.

The latest states to close the gun show loophole are Colorado and Oregon which

approved changes in their laws following school shooting incidents. In the case of Colorado, the incident directly involved the purchase of firearms from an unlicensed seller at a local gun show. The resulting school shootings at Columbine High School in Colorado remains the worst student-on-student massacre in American history. In both Colorado and Oregon, the gun show loophole was closed by overwhelming margins in statewide ballot initiatives.

Since the Columbine shootings, fairly or unfairly, gun shows have been associated with school killings. Thankfully, school shootings in America remain relatively rare and, presumably, the use of the gun show loophole by high school students to obtain firearms also remains rare.

This report seeks to use data from crimes committed in 2001 to see what, if any, affect does the gun show loophole have on ordinary crime. Is this loophole a contributor to illegal gun trafficking? Have criminals and traffickers figured out this loophole and do they use it with regularity? Do gun trafficking patterns emerge that implicate gun shows in loophole-open states as a source for crime guns? Would closing this loophole adversely affect legitimate gun show business?

[5] St. Louis Post-Dispatch, “Gun Show Sales Draw Scrutiny of ATF,” September 28, 2003.

[6] James Jay Baker, Executive Director, National Rifle Association, in a letter to Congress, April 23, 2001.

* The seventeen states that have closed the gun show loophole are California, Colorado, Connecticut, Hawaii, Illinois, Iowa, Maryland, Massachusetts, Michigan, Missouri, Nebraska, New Jersey, New York, North Carolina, Oregon, Pennsylvania, and Rhode Island.

Loophole-open states are the source of dramatically more interstate crime guns than loophole-closed states.

To answer these questions, Americans for Gun Safety analyzed crime gun traces for guns used in crimes committed in 2001 (the most recent data available). In particular, the study looked at the 36,828 guns that were recovered in one state but originally bought in another. These guns are significant because when a gun is recovered in a crime committed in a state other than where it was bought, it is one of the lead indicators that the gun was trafficked.

Of the 36,828 guns that were used in crimes committed in a state other than where it was bought, 27,205 (or 74%) originated in the thirty-three loophole-open states.⁷ On a per capita basis, loophole-open states are the source of nearly three times as many interstate crime guns than loophole-closed states (19.4 crime gun exports per 100,000 population to 7.1 per 100,000).

Each of the top 15 per capita crime gun exporting states have failed to close the gun show loophole; while 11 of the bottom 15 crime gun exporting states have closed the gun show loophole.

The Top 15 Crime Gun Export States for 2001 (per capita)
Each State Has Failed to Close the Gun Show Loophole

State	Crime Gun Exports ⁸	Population	Per 100,000
Mississippi	1,772	2,769,000	63.99
Kansas	1,157	2,654,000	43.59
Virginia	2,489	6,873,000	36.21
West Virginia	641	1,807,000	35.47
Georgia	2,428	7,788,000	31.18
Kentucky	1,226	3,961,000	30.95
South Carolina	1,160	3,886,000	29.85
Alabama	1,301	4,370,000	29.77
Arkansas	723	2,551,000	28.34
Indiana	1,684	5,943,000	28.34
Alaska	148	620,000	23.87
Arizona	1,134	4,778,000	23.73
New Mexico	392	1,740,000	22.53
Nevada	385	1,809,000	21.28
Oklahoma	687	3,358,000	20.46

[7] Bureau of Alcohol, Tobacco, Firearms, and Explosives, "Source States for Traces Submitted Between January 1, 2001 and December 31, 2001 and Traced to a Final Retail Purchaser."

Each of the top ten crime gun exporting states have per capita averages at least twice the national average of 13.38 crime gun exports per 100,000 in population. Mississippi is far and away the leading per capita crime gun export state with a rate nearly five times the national average.

Although only 17 states have closed the gun show loophole, eleven of them are among the fifteen states with the lowest rate of crime gun exports. And only three loophole-closed states occupy spots in the top 25 per capita crime gun exporting states: North Carolina (17th), Maryland (22nd), and Nebraska (24th).

Even states with large numbers of gun owners and frequent gun shows are near

the bottom of the crime gun export list if that state has closed the gun show loophole. For example, Michigan hosted 71 major gun shows last year but because it requires a permit to purchase handguns even from unlicensed sellers, it ranks 45th in per capita crime gun exports.¹⁰ Missouri hosted 57 gun shows last year and ranks 39th. And Illinois hosted 72 gun shows and ranks 38th.

Of the four loophole-open states on the list of the lowest crime gun exporting states, three of them hosted a small number of gun shows in 2003: South Dakota (15 gun shows), New Hampshire (14 gun shows), and North Dakota (10 gun shows).

The Bottom 15 Crime Gun Export State for 2001 (per capita)			
Bolded States Have Closed the Gun Show Loophole			
State	Crime Gun Exports ⁸	Population	Per 100,000
South Dakota	60 ⁹	3,886,000	1.54
New York	328	18,197,000	1.80
New Jersey	202	8,143,000	2.48
Massachusetts	154	6,175,000	2.49
Hawaii	35	1,185,000	2.95
Michigan	456	9,864,000	4.62
Minnesota	253	4,776,000	5.30
Connecticut	190	3,282,000	5.79
Rhode Island	59	991,000	5.95
New Hampshire	77	1,201,000	6.41
California	2,228	33,145,000	6.72
Missouri	369	5,468,000	6.75
Illinois	835	12,128,000	6.88
North Dakota	52	634,000	8.20
Iowa	243	2,869,000	8.47

[8] Ibid

[9] Ibid

[10] The number of gun shows listed for each state is from the Gun-Knife Show Calendar for 2003, Krause Publications, Iola, Wisconsin

FINDING 2

States that have closed the gun show loophole are being flooded with crime guns from states that have left this loophole open.

"This is an AR-15 assault rifle, nearly identical to the one the Washington, DC snipers used to create so much terror over the past few months. We bought it for cash at a local gun show recently, in less time than it takes to fill the banana clip. No background check, no paperwork. We own an un-traceable weapon."¹¹ -- KIRO Team 7, Seattle, Washington

Whether or not a state has closed the gun show loophole determines where criminals obtain their guns. In states where the gun show loophole is open, criminals are far more likely to obtain their guns locally. In states where the gun show loophole is closed, criminals obtain nearly half their firearms in other states - most often from states that have left this loophole open.

In the seventeen loophole-closed states, 42% of the guns recovered in crimes there were originally bought in other states. Comparatively, only 25% of the guns recovered in crimes in the thirty-three loophole-open states were originally bought in other states.

The origin of crime guns in loophole-open to loophole-closed states ¹²			
	Total Crime Gun Traces	Out-of-State Traces	% Out-of-State Traces
Loophole-Closed States	46,632	19,490	42%
Loophole-Open States	61,273	15,373	25%

[11] KIRO Team 7, "Loophole lets gun buyers skirt background check," July 24, 2003.

[12] Bureau of Alcohol, Tobacco, Firearms, and Explosives, "Source States for Traces Submitted Between January 1, 2001 and December 31, 2001 and Traced to a Final Retail Purchaser."

By looking at the origin of crime guns in particular states, this trend becomes even more evident.

Illinois (gun show loophole closed):¹³

- 47% of guns traced to crimes committed in Illinois originated in other states.
- Each of the ten leading source states for Illinois crime guns have failed to close the gun show loophole - Indiana, Mississippi, Wisconsin, Kentucky, Tennessee, Texas, Georgia, Arkansas, Alabama, Ohio.
- 86% of the out-of-state guns recovered in Illinois crimes originated in loophole-open states.

Michigan (gun show loophole closed):¹⁴

- 52% of guns traced to crimes committed in Michigan originated in other states.
- Each of the ten leading source states for Michigan crime guns have failed to close the gun show loophole - Ohio, Kentucky, Alabama, Georgia, Mississippi, Indiana, Florida, Texas, Tennessee, West Virginia.
- 90% of the out-of-state guns recovered in Michigan crimes originated in loophole-open states.

Massachusetts (gun show loophole closed):¹⁵

- 55% of the guns traced to crimes committed in Massachusetts originated in other states.
- Each of the five leading source states of Massachusetts crime guns have failed to close the gun show loophole - Georgia, Florida, New Hampshire, Virginia, Maine.
- 75% of the out-of-state guns recovered in Massachusetts crimes originated in loophole-open states.

New York (gun show loophole closed):¹⁶

- 67% of the guns traced to crimes committed in New York originated in other states.
- Four of the five leading source states for New York crime guns have failed to close the gun show loophole - Virginia, Florida, Georgia, North Carolina (loophole closed), South Carolina.
- 73% of the out-of-state guns recovered in New York crimes originated in loophole-open states.

[13] Ibid.

[14] Ibid.

[15] Ibid.

[16] Ibid.

**Missouri
(gun show loophole closed):¹⁷**

- 57% of the guns traced to crimes committed in Missouri originated in other states.
- Four of the six leading source states for Missouri crime guns have failed to close the gun show loophole - Kansas, Illinois (closed), Nebraska (closed), Texas, Arkansas, Oklahoma.
- 82% of the out-of-state guns recovered in Missouri crimes originated in loophole-open states.

By contrast, three-fourths of the guns traced to crimes in loophole-open states were obtained locally. And in Indiana, Louisiana, Alabama, and Georgia, at least 80% of the crime gun traces were in-state guns and each have failed to close the gun show loophole.

**New Jersey
(gun show loophole closed):¹⁸**

- 69% of the guns traced to crimes committed in New Jersey originated in other states.
- Six of the eight leading source states for New Jersey crime guns have failed to close the gun show loophole - Pennsylvania (closed), Georgia, North Carolina (closed), Virginia, Ohio, Florida, South Carolina, Texas.
- 61% of the out-of-state guns recovered in New Jersey crimes originated in loophole-open states.

[17] Ibid.

[18] Ibid.

FINDING
3

Closing the gun show loophole has no negative impact, and possibly a positive effect on gun show business.

“The indictment lists 11 instances in 2000 when Bostic or one of the women bought weapons at gun shows in Ohio. One of the women, who has yet to be arrested, bought 85 guns at one show, and Bostic bought as many as 45 at a time. The weapons were brought back to Buffalo and sold on the streets by Bostic or associates.”¹⁹

Opponents of adding new requirements for background checks at gun shows say that the real motivation behind these laws is not reducing crime, but “closing gun shows.”²⁰ They argue that background checks take too long to complete and that, unlike checks at gun stores, gun shows only last through the weekend.

Under the law, when background checks are performed for licensed dealers, the Federal Bureau of Investigations has three business days to complete the check. In reality, however, most checks are instantaneous. According to the Department of Justice, 91% of background checks are completed within several minutes²¹ and fewer than 5% take longer than one day.²² The 5% that take the longest are twenty times more likely to uncover an illegal purchaser than the remaining 95% of the checks.²³ Thus, for over 95% of purchasers at gun shows, “instant check” is truly instant.

The speed of NICS has increased markedly under Attorney General John Ashcroft, who made better NICS performance a priority when he became attorney general. In 1999, when Congress first voted to close the gun show loophole, only 72% of background checks were completed instantaneously.

Perhaps the speed of NICS is one of the reasons why it appears that closing the gun show loophole does not have a negative impact on gun show business. In fact, gun shows are more likely to be held in states that have closed the gun show loophole than in states that have not.

Utilizing state-by-state listings in the *Krause Gun/Knife Show Calendar*, which bills itself as a “complete guide for anyone who attends or displays at gun shows,” the NRA claim that background checks hurt gun shows is completely contradicted.

■ **On average, there were more gun shows held last year in states that have closed the gun show loophole (45) than in loophole-open states (41).²⁴**

[19] *Buffalo News*, “Man Indicted on Charges of ‘Flooding’ City with Guns,” August 24, 2002.

[20] National Rifle Association, “New ‘Gun Show’ Bill all Trick and no Treat,” November 3, 2003.

[21] Department of Justice, “National Instant Criminal Background Check System (NICS): 2001/2002 Operational Report,” May 2003.

[22] Department of Justice, NICS Section, via e-mail August 19, 2003.

[23] Department of Justice, “National Instant Criminal Background Check System (NICS),” March 2000.

[24] Krause Publications, “Gun/Knife Show Calendar,” 2003.

**Top Ten Gun Show States for 2003 And Whether
the Loophole is Open or Closed²⁵**

State	Number of Gun Shows	Loophole Open/Closed
Texas	209	Open
Pennsylvania	113	Closed
Florida	111	Open
Ohio	92	Open
California	90	Closed
Wisconsin	88	Open
North Carolina	76	Closed
Illinois	72	Closed
Indiana	72	Open
Michigan	71	Closed

[25] Ibid.

Conclusion and Recommendations

There is overwhelming statistical evidence to conclude that criminals and traffickers have figured out the gun show loophole and are using it to fuel the illicit market in guns. States that have failed to close the gun show loophole are far more likely to be sources of interstate crime guns than states that require a background check, license or permit to purchase handguns from all sellers at gun shows. In addition, states that have closed the gun show loophole are being flooded with out of state crime guns. In fact, whether or not a state has closed the gun show loophole seems to be a threshold as to whether or not a state is a crime gun exporter or importer. Finally, the argument that

background checks put gun shows out of business is not supported by the evidence. States that have closed the gun show loophole actually host more gun shows than states that have left this loophole open.

Gun shows are the last major commercial source of firearms where background checks are optional. Passage of national legislation that requires background checks for all firearm sales at gun shows should have a major impact on reducing the illicit market in crime guns and should not have any deleterious affect on legitimate gun show business.

Appendix 1

Crime Gun Exports by State, Population, and Exports Per Capita (2001), and the Number of Gun Shows Per State (2003) <i>(States that have closed the gun show loophole in bold and italicized)</i>				
State	Crime Gun Exports	Population	Per 100K	Gun Shows
Mississippi	1,772	2,769,000	63.99	19
Kansas	1,157	2,654,000	43.59	35
Virginia	2,489	6,873,000	36.21	29
West Virginia	641	1,807,000	35.47	46
Georgia	2,428	7,788,000	31.18	69
Kentucky	1,226	3,961,000	30.95	43
South Carolina	1,160	3,886,000	29.85	23
Alabama	1,301	4,370,000	29.77	43
Arkansas	723	2,551,000	28.34	24
Indiana	1,684	5,943,000	28.34	72
Alaska	148	620,000	23.87	0
Arizona	1,134	4,778,000	23.73	43
New Mexico	392	1,740,000	22.53	6
Nevada	385	1,809,000	21.28	26
Oklahoma	687	3,358,000	20.46	22
Louisiana	894	4,372,000	20.45	42
<i>North Carolina</i>	<i>1,454</i>	<i>7,651,000</i>	<i>19.00</i>	<i>76</i>
Idaho	226	1,252,000	18.05	15
Delaware	134	754,000	17.77	3
Wyoming	85	480,000	17.71	33
Tennessee	917	5,484,000	16.72	54
<i>Maryland</i>	<i>855</i>	<i>5,172,000</i>	<i>16.53</i>	<i>34</i>
Ohio	1,697	11,257,000	15.08	92
<i>Nebraska</i>	<i>247</i>	<i>1,666,000</i>	<i>14.83</i>	<i>16</i>
Montana	130	883,000	14.72	32
Florida	2,048	15,111,000	13.55	111
<i>Colorado</i>	<i>518</i>	<i>4,056,000</i>	<i>12.77</i>	<i>58</i>

State	Crime Gun Exports	Population	Per 100K	Gun Shows
Vermont	68	594,000	11.45	2
Washington	619	5,756,000	10.75	46
Oregon	347	3,316,000	10.46	65
Maine	117	1,253,000	9.34	3
Texas	1,851	20,044,000	9.23	209
Utah	196	2,130,000	9.20	14
Pennsylvania	1,103	11,994,000	9.20	113
Wisconsin	454	5,250,000	8.65	88
Iowa	243	2,869,000	8.47	45
North Dakota	52	634,000	8.20	10
Illinois	835	12,128,000	6.88	72
Missouri	369	5,468,000	6.75	57
California	2,228	33,145,000	6.72	90
New Hampshire	77	1,201,000	6.41	14
Rhode Island	59	991,000	5.95	0
Connecticut	190	3,282,000	5.79	10
Minnesota	253	4,776,000	5.30	55
Michigan	456	9,864,000	4.62	71
Hawaii	35	1,185,000	2.95	2
Massachusetts	154	6,175,000	2.49	9
New Jersey	202	8,143,000	2.48	3
New York	328	18,197,000	1.80	47
South Dakota	60	3,886,000	1.54	15
Total GSL Open	27,205	140,024,000	19.43	1338
Total GSL Closed	9,623	135,302,000	7.11	768
Total U.S.	36,828	275,326,000	13.38	2106



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The Americans for Gun Safety is a non-profit,
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individuals to own guns and on the need for
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