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| 001. fax                 | re: affidavit [partial] (2 pages) | 03/24/1997 | b(7)(C), b(6) |

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### FOLDER TITLE:

Ban on Domestic Abusers

2016-0931-S

rc2252

### RESTRICTION CODES

#### Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

#### Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

THIS IS WHAT ORIGINALLY  
PASSED THE SENATE II

104TH CONGRESS  
2D SESSION

## S. 1632

To prohibit persons convicted of a crime involving domestic violence from owning or possessing firearms, and for other purposes.

---

### IN THE SENATE OF THE UNITED STATES

MARCH 21, 1996

Mr. LAUTENBERG introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

## A BILL

To prohibit persons convicted of a crime involving domestic violence from owning or possessing firearms, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. DEFINITIONS.**

4 Section 921(a) of title 18, United States Code, is  
5 amended by adding at the end the following new para-  
6 graph:

7 “(33) The term ‘crime involving domestic vio-  
8 lence’ means a felony or misdemeanor crime of vio-  
9 lence, regardless of length, term, or manner of pun-  
10 ishment, committed by a current or former spouse,

1 parent, or guardian of the victim, by a person with  
2 whom the victim shares a child in common, by a per-  
3 son who is cohabitating with or has cohabitated with  
4 the victim as a spouse, parent, or guardian, or by  
5 a person similarly situated to a spouse, parent, or  
6 guardian of the victim under the domestic or family  
7 violence laws of the jurisdiction in which such felony  
8 or misdemeanor was committed.”.

9 **SEC. 2. UNLAWFUL ACTS.**

10 Section 922 of title 18, United States Code, is  
11 amended—

12 (1) in subsection (d)—

13 (A) by striking “or” at the end of para-  
14 graph (7);

15 (B) by striking the period at the end of  
16 paragraph (8) and inserting “; or”; and

17 (C) by inserting after paragraph (8) the  
18 following new paragraph:

19 “(9) is under indictment for, or has been con-  
20 victed in any court of, any crime involving domestic  
21 violence.”; and

22 (2) in subsection (g)—

23 (A) by striking “or” at the end of para-  
24 graph (7);

1 (B) in paragraph (8), by striking the  
2 comma and inserting “; or”; and

3 (C) by inserting after paragraph (8) the  
4 following new paragraph:

5 “(9) who is under indictment for, or has been  
6 convicted in any court, of any crime involving do-  
7 mestic violence,”.

8 **SEC. 3. RULES AND REGULATIONS.**

9 Section 926(a) of title 18, United States Code, is  
10 amended—

11 (1) by striking “and” at the end of paragraph  
12 (2);

13 (2) by striking the period at the end of para-  
14 graph (3) and inserting “; and”; and

15 (3) by inserting after paragraph (3) the follow-  
16 ing new paragraph:

17 “(4) regulations providing for the effective re-  
18 ceipt and secure storage of firearms relinquished by  
19 or seized from persons described in subsection (d)(9)  
20 or (g)(9) of section 922.”.

21 **SEC. 4. RESTORATION OF CIVIL RIGHTS AFTER CONVIC-**  
22 **TION.**

23 Section 921(a)(20) of title 18, United States Code,  
24 is amended by striking the period at the end and inserting  
25 the following: “, or such restoration of civil rights occurs

1 following conviction of a crime of domestic violence (as de-  
 2 fined in section 921(a)(33)). A conviction of a crime of  
 3 domestic violence shall not be considered to be a conviction  
 4 for purposes of this chapter if the conviction is reversed  
 5 or set aside based on a determination that the conviction  
 6 is invalid, or if the person has been pardoned, unless the  
 7 authority that grants the pardon expressly states that the  
 8 person may not ship, transport, possess, or receive fire-  
 9 arms.”.

10 **SEC. 5. ADMINISTRATIVE RELIEF FROM CERTAIN FIREARM**  
 11 **PROHIBITIONS.**

12 (a) IN GENERAL.—Section 925(c) of title 18, United  
 13 States Code, is amended—

14 (1) in the first undesignated sentence, by in-  
 15 serting “(other than a person convicted of a crime  
 16 of domestic violence as defined in section  
 17 921(a)(33))” before “who is prohibited”; and

18 (2) in the fourth undesignated sentence—

19 (A) by inserting “person (other than a per-  
 20 son convicted of a crime of domestic violence as  
 21 defined in section 921(a)(33)) who is a” before  
 22 “licensed importer”; and

23 (B) by striking “his” and inserting “the  
 24 person’s”.

1 (b) APPLICABILITY.—The amendments made by sub-  
2 section (a) shall apply to—

3 (1) applications for administrative relief and ac-  
4 tions for judicial review that are pending on the date  
5 of enactment of this Act; and

6 (2) applications for administrative relief filed,  
7 and actions for judicial review brought, after the  
8 date of enactment of this Act.

○

104TH CONGRESS  
2d Session

HOUSE OF REPRESENTATIVES

REPORT  
104-863

MAKING APPROPRIATIONS FOR THE DEPART-  
MENT OF DEFENSE FOR FISCAL YEAR 1997

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CONFERENCE REPORT

TO ACCOMPANY

H.R. 3610



SEPTEMBER 28, 1996.—Ordered to be printed

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U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1996

27-409

[Page: H11743]

SEC. 658. GUN BAN FOR INDIVIDUALS CONVICTED OF A MISDEMEANOR CRIME OF  
DOMESTIC VIOLENCE .

(a) Definition: Section 921(a) of title 18, United States Code, is amended  
by adding at the end the following:

“(33)(A) Except as provided in subparagraph (C), the term ‘misdemeanor crime  
of domestic violence ’ means an offense that—

“(i) is a misdemeanor under Federal or State law; and

“(ii) has, as an element, the use or attempted use of physical force, or the  
threatened use of a deadly weapon, committed by a current or former spouse,  
parent, or guardian of the victim, by a person with whom the victim shares a  
child in common, by a person who is cohabiting with or has cohabited with  
the victim as a spouse, parent, or guardian, or by a person similarly  
situated to a spouse, parent, or guardian of the victim.

“(B)(i) A person shall not be considered to have been convicted of such an  
offense for purposes of this chapter, unless—

“(I) the person was represented by counsel in the case, or knowingly and  
intelligently waived the right to counsel in the case; and

“(II) in the case of a prosecution for an offense described in this paragraph  
for which a person was entitled to a jury trial in the jurisdiction in which  
the case was tried, either

“(aa) the case was tried by a jury, or

“(bb) the person knowingly and intelligently waived the right to have the  
case tried by a jury, by guilty plea or otherwise,

“(ii) A person shall not be considered to have been convicted of such an  
offense for purposes of this chapter if the conviction has been expunged or  
set aside, or is an offense for which the person has been pardoned or has  
had civil rights restored (if the law of the applicable jurisdiction  
provides for the loss of civil rights under such an offense) unless the

· pardon, expungement, or restoration of civil rights expressly provides that  
· the person may not ship, transport, possess, or receive firearms.’.

(b) Prohibitions:

(1) Section 922(d) of such title is amended—

(A) by striking ‘or’ at the end of paragraph (7);

(B) by striking the period at the end of paragraph (8) and inserting ‘; or’  
and

(C) by inserting after paragraph (8) the following:

‘(9) has been convicted in any court of a misdemeanor crime of domestic  
violence .’.

(2) Section 922(g) of such title is amended—

(A) by striking ‘or’ at the end of paragraph (7);

(B) by striking the comma at the end of paragraph (8) and inserting ‘; or’  
and

(C) by inserting after paragraph (8) the following:

‘(9) who has been convicted in any court of a misdemeanor crime of domestic  
violence ,’.

(3) Section 922(s)(3)(B)(i) of such title is amended by inserting ‘, and has  
not been convicted in any court of a misdemeanor crime of domestic violence  
,’ before this semicolon.

(c) Government Entities Not Excepted: Section 925(a)(1) of such title is  
amended by inserting ‘sections 922(d)(9) and 922(g)(9) and’ after ‘except  
for’.

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| <b>THIS SEARCH</b>       | <b>THIS DOCUMENT</b>          | <b>GO TO</b>               |
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|                          | <a href="#">Doc Contents</a>  |                            |

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**To amend title 18, United States Code, to provide that the firearms prohibitions applicable by reason of a domestic violence misdemeanor conviction do not apply if the conviction occurred...  
(Introduced in the House)**

HR 26 IH

105th CONGRESS

1st Session

H. R. 26

To amend title 18, United States Code, to provide that the firearms prohibitions applicable by reason of a domestic violence misdemeanor conviction do not apply if the conviction occurred before the prohibitions became law.

**IN THE HOUSE OF REPRESENTATIVES**

**January 7, 1997**

Mr. BARR of Georgia (for himself and Mr. STUMP) introduced the following bill; which was referred to the Committee on the Judiciary

---

**A BILL**

To amend title 18, United States Code, to provide that the firearms prohibitions applicable by reason of a domestic violence misdemeanor conviction do not apply if the conviction occurred before the prohibitions became law.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. FIREARMS PROHIBITIONS APPLICABLE BY REASON OF A DOMESTIC VIOLENCE MISDEMEANOR CONVICTION NOT TO APPLY TO CONVICTIONS OBTAINED BEFORE THE PROHIBITIONS BECAME LAW.**

Subsections (d)(9), (g)(9), and (s)(3)(B)(i) of section 922 of title 18, United States Code, are each amended by inserting ` , on or after September 28, 1996,' before `of a misdemeanor'.



# FRATERNAL ORDER OF POLICE

## NATIONAL LEGISLATIVE PROGRAM

309 MASSACHUSETTS AVENUE, N.E. • WASHINGTON, DC 20002

PHONE: (202) 547-8189 FAX: (202) 547-8190



GILBERT G. GALLEGOS  
NATIONAL PRESIDENT

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EXECUTIVE DIRECTOR

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NATIONAL VICE PRESIDENT  
CHAIRMAN, NATIONAL LEGISLATIVE COMMITTEE

EMBARGOED FOR RELEASE

11:00 AM, EST  
8, January 1997

Contact: Deborah Richardson  
202-547-8189, Fax: 202-547-8190

### **America's Largest Police Organization Supports Amendment to the "Domestic Violence Offender Gun Ban" Law**

—The nation's largest police organization joined with Congressman Bob Barr today to introduce an amendment which will eliminate retroactive application of the "Domestic Violence Offender Gun Ban" Law. Gilbert Gallegos, National President of the Fraternal Order of Police (FOP) stated, "Representative Barr's amendment clarifies Congressional intent with respect to this legislation, by making it clear that the prohibition applies only to offenses committed on or after the law's passage." The current interpretation of the statute imposes a firearms disability on any person with a conviction of a misdemeanor crime of domestic violence including police officers and military personnel.

"The FOP does not condone any type of domestic violence, be it felony or misdemeanor; neither do we condone the termination of an employee, a good veteran officer who has been hired by his or her department after a complete background check, because of the new law," stated Gallegos. With the amendment, every individual facing a misdemeanor charge of a crime of domestic violence will know that his or her crime now carries with it an additional penalty-- a loss of the right to possess a firearm-- without disabling a potentially large number of persons who were convicted without this knowledge. "The amendment offered by Congressman Barr will make the legislation enforceable, effective, and equitable," stated Gallegos.

The Fraternal Order of Police has 277,000 members, making it the largest national organization of law enforcement professionals in the United States.

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|                          | <a href="#">Doc Contents</a>  |                            |

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## **To provide that the firearms prohibitions applicable by reason of a domestic violence misdemeanor conviction do not apply to government entities. (Introduced in the House)**

HR 445 IH

105th CONGRESS

1st Session

**H. R. 445**

To provide that the firearms prohibitions applicable by reason of a domestic violence misdemeanor conviction do not apply to government entities.

**IN THE HOUSE OF REPRESENTATIVES**

**January 9, 1997**

Mr. STUPAK introduced the following bill; which was referred to the Committee on the Judiciary

---

### **A BILL**

To provide that the firearms prohibitions applicable by reason of a domestic violence misdemeanor conviction do not apply to government entities.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

### **SECTION 1. FIREARMS PROHIBITIONS APPLICABLE BY REASON OF A DOMESTIC VIOLENCE MISDEMEANOR CONVICTION MADE RETROACTIVELY INAPPLICABLE TO GOVERNMENT ENTITIES.**

(a) IN GENERAL- Section 925(a)(1) of title 18, United States Code, is amended by striking 'sections 922(d)(9) and (g)(9) and'.

(b) RETROACTIVITY- The amendment made by subsection (a) of this section shall take effect as if the amendment had been included in section 658 of the Treasury, Postal Service, and General Government Appropriations Act, 1997 (as contained in section 101(f) of the Omnibus Consolidated Appropriations Act, 1997), on the date of the enactment of such Act. Any liability, penalty, or forfeiture incurred by any person who would not have been subject to the liability,

penalty, or forfeiture if the amendment made by subsection (a) had been so included, by reason of the application of any amendment made by such section 658 to a conviction for a misdemeanor crime of domestic violence (as defined in section 921(a)(33) of title 18, United States Code) is hereby extinguished, and any action or prosecution for the enforcement of any such liability, penalty, or forfeiture shall not be sustained.

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|                    |                      |                   |
|--------------------|----------------------|-------------------|
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|                    | Doc Contents         |                   |

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## NATIONAL ASSOCIATION OF POLICE ORGANIZATIONS, INC.

*Representing America's Finest*

750 First Street, N.E., Suite 920 • Washington, D.C. 20002-4241  
(202) 842-4420 • (800) 322-NAPO • (202) 842-4396 FAX

# URGENT ALERT

President  
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*President, Detectives'  
Endowment Association  
of New York City  
New York, NY*

Executive Vice President  
ERNEST W. GEORGE  
*President, Palm Beach County  
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Recording Secretary  
O. J. HOLT  
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WILLIAM BIRDSEYE  
*Police Officers  
Association of Michigan*

Sergeant-at-Arms  
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Ohio PBA  
Berea, OH*

Executive Secretary  
B. D. "BUD" STONE  
*Past President PORAC  
Berkeley, CA*

Executive Director  
ROBERT T. SCULLY  
General Counsel  
WILLIAM J. JOHNSON  
Legislative Consultants  
JULES BERNSTEIN  
LINDA LIPSETT

TO: ALL NAPO Members  
FROM: Robert T. Scully, Executive Director  
DATE: November 27, 1996  
RE: New Regulations Affecting Law Enforcement Officers

Please be advised that a new prohibition to the 1968 Gun Control Act was recently passed by Congress as an amendment to the Omnibus Consolidated Appropriations Act of 1997. The new firearms disability states that anyone, **including law enforcement officers**, convicted of a misdemeanor crime of domestic violence shall be prohibited from possessing a firearm. The new law is retroactive and will affect misdemeanors that occurred prior to the law's effective date of September 30, 1996. This is a departure from past gun control regulations which have always contained an exemption for law enforcement.

The original legislation, S. 1632, introduced by Senator Frank Lautenberg (D-NJ), did contain an exemption for law enforcement officers in its expansion of the class of persons prohibited from possessing a firearm to include domestic violence misdemeanors.

Unfortunately, on Saturday morning September 28, Representative Bob Barr (R-GA) insisted on deleting the exemption for law enforcement in the Lautenberg language which was adopted into the Appropriations Conference Report. NAPO staff were notified within minutes by Clinton Administration officials of its inclusion and then were told by House leadership that there would be no changes to the Conference Report. Congress voted immediately on the omnibus funding bill to keep the U.S. government running. (The federal government would have shut down again at 12:00 a.m. on October 1 if the Appropriations bill had not passed.)

NAPO is well aware of the drastic implications for law enforcement officers and is working to correct this disastrous problem through legislative and/or legal channels. Until we have determined our best course of action, please apprise the NAPO office of any action taken against law enforcement officers in your jurisdiction under this new law. If you or your legal counsel have any suggestions for a solution to this punitive and ill-conceived amendment, please contact Bill Johnson, NAPO General Counsel at (202) 842-4420.



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Legislative Consultants  
**JULES BERNSTEIN**  
**LINDA LIPSETT**

### **THE BARR AMENDMENT TO THE LAUTENBERG BILL** ***UNFAIR TO LAW ENFORCEMENT***

#### **HISTORY**

On March 21, 1996, Senator Frank Lautenberg (D-NJ) introduced legislation to prohibit persons convicted of a misdemeanor crime of domestic violence from owning or possessing firearms. A companion bill (H.R. 3455) was introduced in the U.S. House of Representatives by Representative Robert G. Torricelli (D-NJ) on May 14. Both pieces of legislation had an "official use" exemption for law enforcement and the military. The official use exemption would have allowed police officers to continue to possess a firearm to do their job.

Neither bill had a hearing or any committee action. NAPO monitored the Lautenberg/Torricelli legislation, but took no position because with its official use exemption, the bill would not adversely impact law enforcement.

On September 28, 1996, Members of Congress, rushing to complete business before adjourning for the year, were finishing action on the funding legislation for government agencies like the Department of Defense (DOD). The DOD Appropriations bill (H.R. 3610) was in a Conference Committee when Senator Lautenberg's bill was amended by Representative Bob Barr (R-GA). Representative Barr insisted on deleting the official use exemption for law enforcement and the military before the bill's adoption into the final Omnibus Consolidated Appropriations Conference Report.

The U.S. House of Representatives and Senate immediately passed the Conference Report containing the Barr change to the Lautenberg bill and it was signed into law by President Clinton on September 30 to avoid a government shutdown which would have occurred on October 1.

On November 26, the Bureau of Alcohol, Tobacco and Firearms issued notification of the new firearms disability to all state and local law enforcement agencies. This has caused tremendous confusion among the law enforcement community as there is no clear directive for local law enforcement officials to follow. Examples of action taken by local law enforcement agencies include:

*Denver, CO* – three police officers had to surrender their weapons and were reassigned to desk duty although one officer was given back his weapon when officials discovered a mistake had been made.

*Minneapolis, MN* – three Minneapolis officers surrendered their weapons and were placed on paid administrative leave until an investigation determines whether they should be fired.

*Detroit, MI* – A sergeant surrendered his weapon after it was strongly suggested he do so although he continues his job as an investigator in the Armed Robbery division.

*Los Angeles County, CA* – several officers were forced to surrender their weapons and badges before they were placed at civilian jobs within the county.

Representative Barr recently announced that it was never his intention for the law to be enforced retroactively and has committed to working to amend that portion of the law.

#### **NAPO ACTION**

This new law unfairly penalizes law enforcement. Law enforcement officers are the only workers in the country who will lose their jobs if they can no longer possess a firearm, a tool of the trade in police work.

Now that this ill-conceived bill is law, NAPO is working on a two-prong approach to resolve the problem the law poses for our members.

##### **① Legislative Action**

NAPO is meeting with members of Congress to garner support to reinstate the "official use" exemption for law enforcement. Because Barr changed the language of the Lautenberg bill at the eleventh hour, most members of Congress were unaware that they even voted for it. NAPO believes that many members will be sympathetic to the problem this poses for law enforcement and work with us to make a technical correction. This correction can and should be accomplished by deleting in its entirety Subsection C "Government Entities Not Excepted."

Congress will be in session for one day on January 7, 1997 and then out again until February so an immediate fix is unlikely.

Please help us by contacting your entire Congressional delegation to urge their support of reinstating the law enforcement exemption. You can call the Capitol operator at (202) 224-3121 or write your delegation directly at the Honorable (name of your Representative or Senator), U.S. House of Representatives/U.S. Senate, Washington, D.C. 20515 (House) or 20510 (Senate).

##### **② Legal Action**

NAPO is pursuing taking legal action in federal court to challenge the new law on several grounds. The provisions of this law may be subject to attack under the commerce and ex post facto clauses of the Constitution as well as the Second, Fifth, Ninth, Tenth and Fourteenth Amendments. It should be noted that there are previously decided cases which may cut against some of these arguments, especially the ex post facto one. Nonetheless, NAPO's National Law Enforcement Officers' Rights Center is already committed to pursuing every available legal avenue to remedy this situation.

Please contact NAPO at (202) 842-4420 with any and all information on officers being terminated, suspended, placed on administrative leave or otherwise affected by the new domestic violence law.

12/20/96



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*Executive Secretary,  
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Berea, OH*

Executive Secretary

B. D. "BUD" STONE

*Past President PORAC  
Berkeley, CA*

### FOR IMMEDIATE RELEASE:

January 9, 1997

### CONTACT:

Beth Weaver (202) 842-4420

Executive Director

ROBERT T. SCULLY

General Counsel

WILLIAM J. JOHNSON

Legislative Consultants

JULES BERNSTEIN

LINDA LIPSETT

## NAPO SUPPORTS POLICE "OFFICIAL USE" AMENDMENT TO DOMESTIC VIOLENCE LAW *Cop Group Critical of Rep. Barr's Band-Aid Fix*

The National Association of Police Organizations (NAPO) today announced their strong support of an amendment introduced by Representative Bart Stupak (D-MI), a former Michigan state trooper, which will reinstate the "official use" exception for law enforcement to the recently passed, domestic violence law.

"The Stupak amendment will restore the original intent of the Lautenberg, domestic violence legislation," stated Bob Scully, Executive Director of the 185,000-member organization.

"Firearms are a tool of the trade for cops and the current law will destroy law enforcement careers unless it is amended."

The Lautenberg provision, signed into law on September 30, 1996, prohibits persons convicted of domestic violence misdemeanors from possessing firearms. The law penalizes law enforcement officers who are the only workers in America who will lose their jobs if they can no longer possess a firearm.

"Our law enforcement officers and members of the military have always been prepared to make the supreme sacrifice in service to their country and their communities," Congressman Stupak said. "It would be the greatest injustice to penalize them more than any other citizen by denying them the right to continue their line of work."

NAPO also denounced a Band-Aid approach by Representative Bob Barr (R-GA) to abolish *only* the retroactive application of the domestic violence gun prohibition.

Scully said, "For Congressman Barr to fix the situation retroactively is too little, too late. While we certainly appreciate his efforts to alter this ill-conceived law, he is responsible for deleting the 'official use' exception from the Lautenberg bill before its attachment to the omnibus appropriations bill."

The Stupak "official use" amendment would allow sworn law enforcement officers to use their service weapons for official on-duty use, as originally defined in the 1968 Gun Control Act.

"Gun control legislation dating back almost 30 years has clearly made an exception for law enforcement and the military," Stupak noted.

The National Association of Police Organizations serves its members, 3,500 police unions and associations and 185,000 sworn law enforcement officers across the country, through federal legislation, legal advocacy and education.



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*Representing America's Finest*

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**FOR IMMEDIATE RELEASE:**

**March 5, 1997**

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### **NAPO POLL SHOWS AMERICAN PUBLIC FAVORS POLICE EXCEPTION TO DOMESTIC VIOLENCE LAW POLICE GROUP TESTIFIES IN CONGRESS FOR LEGISLATIVE FIX**

Recording Secretary

O. J. HOLT

*President, Central*

*Coast Chapter, PORAC  
San Jose, CA*

Treasurer

WILLIAM BIRDSEYE

*Police Officers*

*Association of Michigan*

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MARTIN McKEAN

*Executive Secretary,*

*Ohio PBA*

*Berea, OH*

Executive Secretary

B. D. "BUD" STONE

*Past President PORAC*

*Berkeley, CA*

The National Association of Police Organizations (NAPO), today released polling data that shows a **61%** majority of the American public backs reinstatement of the so-called "official use" exception for law enforcement to the recently passed Lautenberg domestic violence law. **39%** oppose the police exception's reinstatement.

William J. Johnson, NAPO General Counsel, testified before the Crime Subcommittee in strong support of the Stupak bill (H.R. 445). Johnson stated, "An absolute majority of the American public supports the common sense approach of the Stupak measure which will allow local police agencies discretion in cases of domestic violence offenders. The local chief law enforcement official is the best qualified to make the call whether or not an officer is rehabilitated, counseled, disciplined, suspended, fired, treated or reassigned."

NAPO announced the results of the nationwide poll as the House Subcommittee on Crime held a hearing on the new domestic violence law. The Lautenberg law prohibits any person convicted of domestic violence misdemeanors from possessing a firearm.

The Stupak "official use" amendment would allow sworn law enforcement officers to use their service weapons for on-duty use, as originally defined in the 1968 Gun Control Act. The Stupak bill would not require any agency to hire or retain any domestic violence offender, but it does allow for the possibility that good cops can still be of value to their communities.

"Domestic violence is a heinous crime and we in law enforcement condemn it as such," Johnson continued. "But, we must note that police are the only workers who are being fired or suspended under this new law, which makes no allowance for rehabilitation or reconciliation. The current Lautenberg law will take cops' jobs away if they can no longer possess firearms, a tool of their trade."

The poll, conducted for NAPO by the Global Strategy Group, Inc. surveyed 1003 adults between January 22 -28, 1997. The margin of error is +/- 3.5%

The National Association of Police Organizations serves its members, 3,500 police unions and associations across the country representing over 185,000 sworn law enforcement officers, through federal legislation, legal advocacy and education.



Global Strategy Group, Inc.  
611 Broadway, Suite 206  
New York, NY 10012

## NATIONWIDE SURVEY

January, 1997

1,003 Interviews, Margin of error  $\pm 3.1\%$

Hello, I'm \_\_\_\_\_ of \_\_\_\_\_, a national research firm. We're talking with people all over the country today about some important issues, and would like to ask you a few questions on a confidential basis. This is not a sales call. We simply want to know your opinion on some issues of interest. To begin...

1. Are you at least 18 years of age or older?

100% Yes

No

Don't know/Refused

Last fall, Congress passed a law prohibiting people convicted of domestic violence misdemeanors from possessing a firearm. This law now includes police officers whose jobs depend on their ability to carry a firearm on duty. The new law will result in police officers losing their jobs.

The law originally contained a so-called "official use" exception for police and the military to carry firearms while on the job.

Congress is considering a bill that would restore the "official use" exception to this law. Would you strongly support, somewhat support, somewhat oppose, or strongly oppose putting the "official use" exception back in the law?

*(Of those who had an opinion)*

38% Strongly support  
23% Somewhat support  
12% Somewhat oppose  
27% Strongly oppose

TOTAL SUPPORT: 61%

TOTAL OPPOSE: 39%



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## MEMORANDUM

TO: ALL NAPO MEMBERS

FROM: BILL JOHNSON, NAPO GENERAL COUNSEL

DATE: JANUARY 13, 1997

### DEFENSES TO THE NEW FEDERAL GUN LAW

As you know, Congress, in the last days of the 1996 fiscal year, passed a spending bill that needed to be signed into law by September 30 in order to keep the government running into fiscal year 1997, which started October 1. Congressman Bob Barr of Georgia, in what appears to be a deliberate payback to professional police groups like NAPO that supported the Brady bill and the 1994 Crime bill, tacked on a little-noticed provision that would, for the first time, strip law enforcement officers of their ability to carry a firearm *on duty*, if the officer had *ever* been convicted of a misdemeanor crime of domestic violence. Mr. Barr did *not* try to amend the law so that convicted *felons* would be prohibited from carrying weapons as police, only *misdemeanants*. The ridiculous result is that if an officer murders his spouse, he can still carry a firearm on duty if a department for some reason wanted to hire him. If, however, an officer throws the T.V. remote control at his spouse during an argument over what to watch on television, that officer can no longer carry or possess a firearm *on or off duty*.

NAPO has been working and lobbying this issue since last fall in an effort to restore the official use exception (police and military) for those convicted of domestic violence misdemeanors. We have already had legislation drafted and introduced in the Congress to correct this problem. The NAPO bill number is H.R. 445, and the chief sponsor is Congressman Bart Stupak of Michigan. As you may have heard, the national lodge of the FOP has been working with Bob Barr to call for hearings on the matter, and has capitulated to Barr by publicly supporting yet another Barr bill that would take away some, *but not all*, retroactive applications of the bill, while at the same time it would *not* reinstate *any* official use exception for either police or the military. If Bob Barr's latest attempt (with the collusion of the national FOP) succeeds, then under federal law O.J. Simpson can have a firearm, because his prior domestic violence conviction was received before September 28, 1996, but a police officer who is judged to have spanked his child excessively cannot, either on or off duty! You might well wonder why the national FOP would get suckered into supporting such a result. Go figure!

NAPO's bill (H.R. 445), by way of contrast, would flat-out restore the governmental official use exceptions, and would do it so that, one, it doesn't matter when the domestic violence conviction occurred, and, two, the exception would be retroactive to the date of passage of the Barr bill, so that no officers would risk being "caught in the gap". The Barr bill does neither one of these things. Another crucial difference between the NAPO-Stupak cure and the Barr-FOP Band-Aid is that we are urging swift enactment of our bill, while Mr. Barr is asking only for "committee hearings" to "study the issue." Mr Barr, if you don't understand the issue and need to have hearings, then why are you introducing legislation pretending to fix it?

In the meantime, it is important to remember that the current federal law, as ill-conceived as it is, does still contain several provisions that officers and police associations may lawfully use to exempt themselves.

## 1. WHICH DOMESTIC VIOLENCE OFFENSES ARE COVERED?

The new law added a new definition to Section 921(a) of title 18, United States Code which will be codified as definition 33. Definition 33 provides that:

"the term 'misdemeanor crime of domestic violence' means an offense that --  
(i) is a misdemeanor under Federal or State law; and  
(ii) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim."

As you can see, the definition is very broad, yet it still provides some ways out. For example, the threatened, but not actually attempted, use of physical force would not come under the definition (unless the threat involved a deadly weapon). Also, the statute refers to the "spouse" or one who is or has "cohabitated with" a victim or one "similarly situated to a spouse." It does not appear to cover a boyfriend-girlfriend type case, if the two persons were not cohabitating. Similarly, it doesn't appear to cover offenses committed by a child against his parent (good news for the Menendez brothers).

Also please note that the definition speaks in terms of an "element" of the offense, which is a term of specific meaning in the criminal law, and generally means an essential and definite factual circumstance or happening, without which the offense cannot legally be said to have occurred. An example is "the death of the victim" is an element of the offense of "homicide". This is important because often a spouse may be charged in a domestic violence case with a charge such as "disorderly conduct" or "trespassing" which may not have as a necessary element the use or attempted use of physical force. If you have officers in this situation, you need to be aware that this is one more argument in support of the position that the new law doesn't apply. *Be Advised*, however, that the department or ATF may look deeper into the facts of a case than the charge to see if the facts themselves

involved force. Nonetheless, it is one more hurdle for management and the ATF.

## 2. WHAT IS A "CONVICTION"?

The new law provides that a person shall not be considered to have been convicted unless:

- "(I) the person was represented by counsel in the case, or knowingly and intelligently waived the right to counsel in the case; and
- (II) [If entitled to a jury in the jurisdiction where the case was prosecuted]
  - (aa) the case was tried by a jury, or
  - (bb) the person knowingly and intelligently waived the right to have the case tried by a jury, by guilty plea or otherwise."

Initially we should note that the statute *doesn't* say that "a person shall be considered convicted if". Rather it speaks in terms of a person "not being able to be considered convicted unless". This may be an important distinction, since a person who had counsel and a jury provided him only becomes *eligible* to have the result counted against him as a conviction, it doesn't require it. This may be a useful argument in states such as Florida, which provide for a "withholding of adjudication of guilt" in a criminal case, which means that the person, although guilty, does not have a formal conviction entered into his record. Police officers and associations should be prepared to argue that, under their state law, the outcome of the particular misdemeanor case involved did not amount to a "conviction" as that term is defined legally in that state. Also, the officer and association must be ready to assert that, one, if there was counsel, the officer was not properly represented by competent, effective counsel, two, if there was no counsel the officer should assert that he did not knowingly and intelligently waive his right to counsel, and three, if there was no jury trial, the officer should assert that he did not knowingly and intelligently waive his right to a jury trial. Note that a guilty plea by itself does not automatically properly waive the rights to either counsel or jury. The judge must inquire of the defendant if he knows his rights, if he understands the consequences of waiving his rights, that he is competent to waive his rights, and that the decision to waive his rights is truly voluntary.

Often times, especially in misdemeanor cases which occurred years ago, the court documents which would prove whether a person truly knowingly and intelligently waived his rights are no longer available. If the person asserts that he did not properly waive his rights, and it is impossible to disprove that assertion, then we must argue that the new law does not apply. *Be Advised* that ATF and management of the department will likely argue that the burden is on the officer to prove an invalid waiver, but this flies in the face of traditional constitutional analysis of criminal statutes, which provides that ambiguity or uncertainty as to whether a criminal statute applies gets resolved in favor of the accused individual, not in favor of the government. This is particularly true when, as here, we are dealing with the forfeiture of a fundamental right (to possess arms). Although this right is less politically popular than some others, it is still a right of citizenship in this country, and we must not be afraid to argue that the officer's rights cannot be forfeited unless the government can prove its allegations.

### 3. WHAT ABOUT EXPUNGEMENTS OR PARDONS?

Subsection (B)(ii) of the new law provides that:

"A person shall not be considered to have been convicted . . . if the conviction has been expunged or set aside, or is an offense for which the person has been pardoned or has had civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense) unless the pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms."

Obviously this provision provides the clearest route to avoid application of the new law, *but only if* officers and associations are aggressive in exploiting it. A great deal will depend on whether or not the law in your state provides for expungements of records. Some states allow it, but only after a specified period of time has passed. Other states may restrict it if the offense involved actual violence, or harm to a child. But just about every state should provide for the restoration of rights, either by a pardon or formal restoration of rights by the executive (governor) or by order of the court (in the interest of justice) or by application of a state statute. Many states have statutes that operate to restore the rights of an offender after a period of time, or upon completion of a sentence or probation. NAPO has obtained a copy of the U.S. Department of Justice's state-by-state survey of these laws, and we encourage you to contact us for your particular state's information.

In the meantime, please do contact your entire congressional delegation and urge them to support H.R. 445, by Mr Stupak. Remember that H.R. 445 is much better than the Band-Aid fix of Mr. Barr, who got us into this mess in the first place. Until the legislation is fixed, I encourage you to aggressively pursue all the options that are still available under the law as it now exists. As always, please contact NAPO immediately if you learn of a case that we ought to know about or if you have any questions or concerns.



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## WRITTEN TESTIMONY OF WILLIAM J. JOHNSON

## GENERAL COUNSEL, NATIONAL ASSOCIATION OF POLICE ORGANIZATIONS, INC.

BEFORE THE UNITED STATES HOUSE OF  
REPRESENTATIVES SUBCOMMITTEE ON CRIME  
MARCH 5, 1997

Mr. Chairman, honored members of this Subcommittee, fellow colleagues, on behalf of the more than 185,000 sworn, professional law enforcement officers throughout this country who are proud to call themselves members of the National Association of Police Organizations (NAPO), I thank you for today's opportunity to add our voices to those calling for fundamental fairness and due process of law for our nation's police. My name is Bill Johnson, I am a former police officer, in Maine; and prosecutor, in Miami. I now am proud to serve as General Counsel to NAPO.

Let me begin by saying, in the clearest possible terms, that NAPO, and the officers NAPO represents, abhor violence of any sort. The men and women who serve our communities as law enforcement officers probably do more, every day of their working lives, to ameliorate and prevent the effects of violence and armed aggression than any other group of people in this country. No one sees first hand the results of violence like our police do. No one makes a greater effort, to the point of sometimes risking the forfeiture of their own lives, to stop it.

It is also crucial to emphasize at the outset of today's hearing that America's police are *not* asking for preferential treatment, although I believe that these men and women are certainly special, and among the best this nation has to offer. What America's police ask is simply recognition by the Congress of the same basic, fundamental rights enjoyed by all free citizens of this republic: The right of freedom from arbitrary governmental action against them. The right to be heard when their government seeks to impose punishment upon them. The right to continue to earn one's own paycheck and to use the tools of one's profession free of interference unless and until an accuser submits evidence of wrong-doing on the job. These freedoms form the very bedrock of our American experiment in the rule of law. They predate the Constitution itself.

Indeed, it was for these freedoms that men and women laid down their lives in our Revolution; sacrificing all they had in order even to have the chance to frame a constitution such as ours.

It is particularly appropriate to argue for the honoring of basic human rights here, today. This Congress sits as the direct heir to the Continental Congress and the Constitutional Convention of our forefathers. It was these patriots who perceived the fundamental truth that the lawful possession of firearms by those who are disciplined in their legitimate use and who are sworn to serve the populace is one of the fundamental safeguards of liberty. Today's professional police forces are the worthy descendants of the first citizen militias organized to preserve and defend the peace from lawbreakers. It is altogether fitting, therefore, to take this time to contemplate how America treats her guardians of liberty and the rule of law: her police.

It is crucial to understand that NAPO is today arguing for the right and duty of police departments throughout this nation to properly equip their officers, in the course, and only in the course, of the officers' duties. NAPO has no quarrel with the goal of removing firearms from the households where domestic violence is ongoing. Indeed, such a goal would certainly make our officers' jobs safer. NAPO does assert, however, that the federal firearms regulatory framework as it now exists goes too far. It would take firearms out of households regardless of whether violence is still ongoing, indeed regardless of whether any violence had ever occurred in that dwelling or in that family. It also serves to deprive the one group of men and women who depend on the lawful protection of a firearm most, of the ability to protect themselves and others (protect, not harm). This group of citizens is, of course, our professionally trained police force. Because of the public's just anger with intolerably high levels of crime, and their revulsion at society's ever-increasing level of violence, public officials throughout this country

are constantly bombarded with demands for new, tougher laws, more prison space, more judges, more prosecutors, more aggressive law enforcement, and, always, more police. The police officer on patrol is correctly regarded not just as the symbol of public safety and order, but as the real, tangible servant of the law. He or she is a living, breathing example of hope in the forlorn city; of rescue on the desolate highway; of service to others and of obedience to a higher law in the face of temptation and evil. The public demands more police because they are angry and frightened, and legitimately so. But the public not only demands more police officers, they also demand more *from* the police that are hired. They want police who are smart, well-trained, tough when they need to be, compassionate to the less-fortunate. They want, above all, police who will reduce and eradicate crime where they live and work.

These political and societal pressures are perhaps nowhere more apparent than in the expressions of public concern over domestic violence. The multiple trials of O.J. Simpson and the Menendez brothers have served to fuel the already-heightened sensitivities to domestic violence. (It is interesting to note that the Lautenberg/Barr amendment would have saved none of the victims in those cases.) Representatives of the victims of violence are justifiably angry and understandably seek some measure of preventative deprivation of firearms in the home. However, such a "cure" proves ill-thought out and superficial when examined in the context of police work.

Police work has long been recognized as an extremely stressful occupation. The risks of alcoholism, depression and even suicide are higher for police than for the public at large. It is no surprise, therefore, that police officers also suffer from a high risk of separation or divorce, yet there is no evidence of which NAPO is aware that shows a higher propensity for armed

violence by police officers going through a separation or divorce as compared to the public at large. Indeed, it would appear that officers are less likely, not more, to commit violence for several reasons. One is that they have been forced to learn, by months or years of training and experience, to keep their cool in the face of provocation. Another is that they daily live a life of restraint in the use of weapons. They know every day that any use of force by them will have to be justified to superiors, investigators, prosecutors and licensing commissions. But perhaps the biggest and most effective element of restraint is the fact that an officer knows that he or she risks suspension or termination for any violation of the law, a fact of the officer's working life that distinguishes him or her from those in any other walk of life.

Our citizens may properly exercise their rights to criticize or express concern about police activities that are ongoing in the community. This criticism and comment is a facet of the American tradition of a healthy skepticism of authority. It is understood and honored by America's police as one of the parameters of policing a democratic society. Healthy and constructive criticism is to be well-received by police. Reckless bad-mouthing of the police, without regard for the facts, however, tears down police morale, destroys the public's confidence in their police, and inflames, sometimes to the point of violence, the passions surrounding controversial cases. Such defamation of the individual men and women who serve our communities as police officers serves no other purpose than to further some political agendas, or to satiate the personal desire for celebrity on the part of certain demagogues. There is, however, clearly no rational basis upon which to discriminate against police when we consider the actual likelihood of armed abuse.

And yet, continuing to focus on the law's effect on police, we must note that police are

the only group of people who, as a class, are being fired or suspended under this new law, which makes no allowance for date, circumstance, or age of conviction. Indeed the law makes no allowance for rehabilitation or reconciliation, no matter how complete. If indeed we are concerned about domestic violence, common sense would tell us that taking away the major bread-winner's job at the very moment his or her family is teetering on the brink of collapse is probably the worst thing we could do for all involved. The sudden loss of employment will inevitably lead to increased stresses within the family, and, thus, to an *increased* risk of domestic violence. The ability to reconcile and preserve our society's families is thus severely gutted. If, indeed the couple divorces, the ability of the bread winner to pay child support, alimony, or to maintain health insurance benefits has just been lost. Again, the *practical* effect of this law, when we speak of police officers, is to *increase* the risk of domestic discord, not alleviate it, no matter how noble the *intentions* of the legislators when they wrote this law.

As this subcommittee knows better than perhaps any other deliberative body in the world, public officials are bound by their duty to their constituents to seek to do whatever is possible to ameliorate the effects of crime in their communities. It is no different at the state, county or local level. Elected and appointed officials must be responsive to the concerns of the public on crime issues, or face the certainty of loss of office. Councils pressure the mayor, the mayor pressures the chief of police, and the chief orders his or her officers to be smart, be tough, be aggressive, be involved in the community, because that's what's going to reduce crime. Police agencies are compelled to be responsive to the communities which they serve. Local sheriffs and chiefs know that they must respond effectively to community concerns, or risk losing their own jobs. This fact does not fail to hold true when we talk about which officers should be hired or

retained on a police force. If the intent of Congress was to distrust local chiefs and sheriffs in the process of locally hiring men and women to locally enforce state and local laws, such concern is misplaced. There is simply no need for Congress to issue a blanket ban on the local hiring or retention of local governmental employees to enforce local laws when local entities are already both sensitive and responsive to local community concerns. This one-size-fits-all approach makes no allowance for local discretion, for circumstance, for local need, nor for rehabilitation; no matter what. By directly and without exception dictating exactly who local agencies may hire or retain to enforce local laws, NAPO would respectfully assert that Congress has overstepped its bounds and trampled on the legitimate rights of State and local governments.

This action by Congress is seen to be even less defensible when we consider that the existing federal statutory scheme for the regulation of firearms in this country has, since its inception, always recognized the constitutional requirement that state and local governments still be free to operate and enforce their own state and local laws as they, not Congress, sees fit. The so-called "official use" exception needs to be seen for what it is. It is not a license for individual officers to do as they please regardless of federal law; rather it is a recognition by Congress that the Constitution permits Congress to go only so far in regulating the affairs of the Republic. Much of the right, and the ability, to govern is deliberately left to States and localities, and wisely so. It is those localities which best know the local needs and wants of citizens. Please understand why the official use exception is there, it is not intended as a sop to individual officers, although an individual officer would certainly see it as a benefit to be able to keep his or her job, even if he or she could no longer possess a firearm off duty; the exception is a necessary and constitutionally mandated recognition of the fact that state and local governments

may not be dictated to by Congress in matters of state and local enforcement of state and local law.

It is also important to note that the exception, which has been with us for nearly thirty years, does indeed work well. It is constitutional, it makes common sense, it is easily applied and understood, and it comports well with our nation's history of Anglo-American jurisprudence. Since before the founding of our Republic, the right of a person to lawfully keep a firearm was understood to be an important mark of freedom and citizenship. It shared this distinction with the right to vote, to serve as a juror, and to hold property. In keeping with its importance, this right could be stripped for only the most serious of offenses, felonies. The commission of a felony brought with it the forfeiture of these rights of citizenship. Federal law has thus traditionally followed the lead of both English law and State law in denying to felons the personal right of firearm ownership. This new Barr/Lautenberg law shatters this time-honored and effective restriction of the private right to bear arms. For the first time, misdemeanants are stripped of a fundamental civil right, and retroactively at that! Now, NAPO knows very well that the right to bear arms is not our most popular right at times, yet popular or not, it survives in our Constitution to this day, just like the right to vote, to sit on a jury, or to hold property. Although taking away one's right to own (or even to temporarily possess in the course of duty) a firearm because of a domestic violence misdemeanor may be politically satisfying, it is no more constitutional than stripping a citizen of the right to a jury trial because of serious speeding violation (a misdemeanor in most states) which occurred forty years ago when the citizen was sixteen. We wouldn't dream of doing that. Yet if we are honest with ourselves, we are forced to admit that the only difference between the two cases is that one is politically popular, and one

would not be. *Constitutionally* there is no difference.

As a practical matter, it is also important to note that the existing governmental use exceptions have *not* led to any increased risk of armed violence committed by police. Such happenings are extraordinarily rare. When they do happen, they make the news precisely because of their rarity. While every violent act that does occur must be prevented when possible and punished where prevention fails, it is important to point out that every violent act cited as an example by the opponents of reform was *already* against the law when carried out. Congress making it doubly against the law will not prevent it from happening again, if in fact someone is so consumed with rage, so blind with fury, so evil and so malevolent, that he or she would do violence to his or her own family. Such persons have, sad to say, determined to do it whatever the cost; and the fact that Congress has said "You're not supposed to have a gun in the house anymore" will be ignored with the same vicious contempt with which these criminals already abuse the law and loved ones alike.

How are we, then, to fix this mess which has been brought upon us? H.R. 445 provides the framework for doing so. By simply restoring the governmental use exemption, both the legitimate and weighty concerns of victims' advocates as well as those of law enforcement are served. The law would be restored to the form in which it passed the Senate, and would still allow the removal of firearms from any home (including a policeman's) where domestic violence is occurring. It would still make criminal the violation of its provisions. It would still provide a deterrent against abuse. And, while accomplishing all these things, H.R. 445 would additionally allow local officials to decide whether or not any one individual officer should lose his or her job or should be rehabilitated, counseled, disciplined, evaluated, suspended, reconciled, demoted,

restricted, censured, reprimanded, treated or reassigned instead. Note please that H.R. 445 does *not require any agency anywhere* to hire or retain *any* domestic offender. It does, however, allow for the *possibility* that *maybe, just maybe*, out of the more than 600,000 law enforcement officers in this nation, there are one or two or ten who can be and still are good cops of great value to their communities, despite a one-time offense for which they have already repented and paid whatever price was to be had.

In closing, let me emphasize that NAPO is the same police group which stood up in 1994 when almost no one else would, to support the 1994 Crime Bill, which included the Violence Against Women Act; the Safe Homes for Women Act; the Civil Rights Remedies for Gender-Motivated Violence Act; the Equal Justice for Women in the Courts Act; the Crimes Against Children and Sexually Violent Offender Registration Act; the Assaults Against Children Subtitle; the Task Force on Missing and Exploited Children Act; and the Prohibition Against Disposal of Firearms to, or Receipt of Firearms by, Persons Who Have Committed Domestic Abuse. We are the same group which took the heat to defend the Assault Weapons Ban and The Brady Bill when it was unpopular to do so. We would willingly put our record against violence and for the protection of children and women against any other group's in the country. Congress respected our advice then: Please listen to us now. Reinstate the governmental use exception. Help get firearms out of the homes where violence is in fact ongoing, regardless of the occupations of the parties involved. But help the good cops who are out there retain their careers when (and only when) that is the right thing to do.

On behalf of the more than 185,000 sworn, rank-and-file law enforcement officers represented here today by NAPO, I thank you for your time and your attention to these critically

important matters.

(In accordance with House Rule XI, clause 2(g)(4), Mr. Johnson's curriculum vitae is attached. Neither Mr. Johnson nor NAPO has received, in this or either of the two preceding fiscal years, any federal grant, contract or subcontract. NAPO does have a sister 501(c)(3) organization, the Police Research and Education Project, Inc. (PREP), which has received federal Office of Justice Programs grants in this and the immediately preceding fiscal year: One in the amount of \$103,022.84 and one in the amount of \$145,626.97, awarded to PREP to conduct an ongoing study of the causes, effects, and reduction of police officer stress in the family.)

# The Washington Post

MONDAY, APRIL 7, 1997

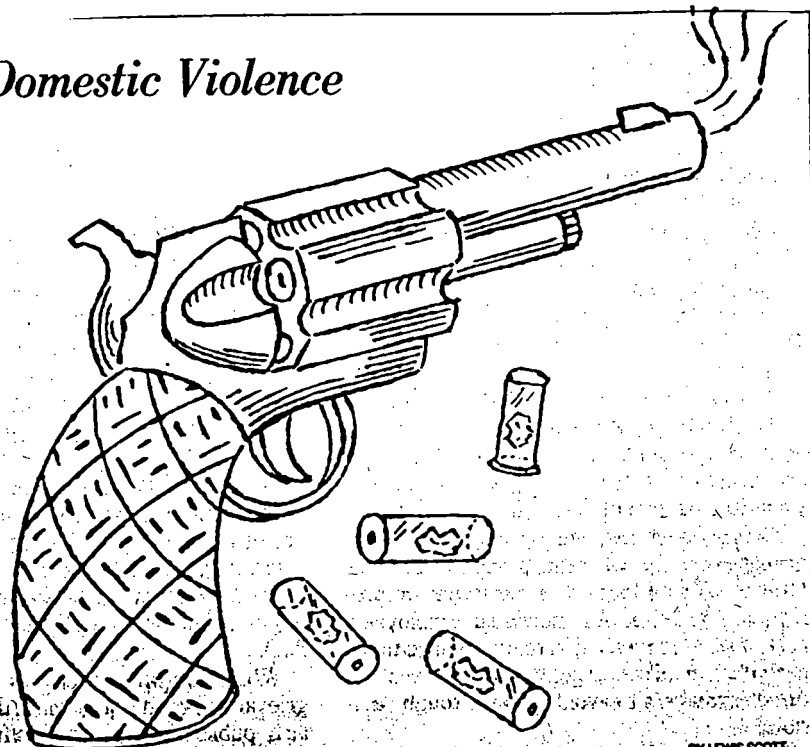
## LETTERS TO THE EDITOR

### *Under the Gun of Domestic Violence*

As a retired Detroit police officer and as the executive director of the National Association of Police Organizations, an organization that represents 185,000 law enforcement officers, I agree that firearms should be removed from homes where domestic violence of any nature is going on ["Gun Buyers and Domestic Violence," editorial, March 27]. In fact, such a law would make our officers' jobs a lot safer.

But the problem with the Lautenberg law is that it lacks the "official use" exception that would let convicted officers use their service weapons for on-duty use. The official-use exception is found in the Stupack bill (H.R. 445), which prevents police officers as a class from being fired or suspended automatically and without exception. On a case-by-case basis, however, individual police officers still can be punished by their chief. The bill also protects them from being denied the right to earn a paycheck and to use the tools of their profession free of interference until an accuser submits evidence of wrongdoing on the job.

I can tell you from experience that police departments are addressing the issue of domestic violence within their own departments. Officers routinely are suspended with-



out pay or terminated for such behavior. But it should be the department's decision, not a "Washington one-size-fits-all approach." Let's give the departments at the state and local level the chance to salvage the training and dedication of any officer in question. Let's also send officers to counseling and monitor their progress and rehabilitation.

A poll conducted in January reported that 61 percent of the Ameri-

can public backs reinstatement of the "official use" exception for law enforcement. Police face enough challenges protecting the public as it is. Let's not take their jobs away if their police chiefs determine that they have been rehabilitated and can be of value to their communities.

ROBERT T. SCULLY

Executive Director

National Association of Police Organizations Inc.

Washington



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December 9, 1996

TO : Honorable Frank Lautenberg  
Attention: Mitchell Sklar

FROM : American Law Division

SUBJECT : Constitutional Issues Raised by a Provision Prohibiting  
Firearm Possession by an Individual Convicted of a  
Misdemeanor Crime of Domestic Violence

This is in response to your question and will confirm our earlier conversation concerning the constitutional issues raised by a provision prohibiting firearm possession by an individual convicted of a misdemeanor crime of domestic violence. The provision, apparently included within the Public Law No. 104-208,<sup>1</sup> adds that category of individuals to the list of those who may not lawfully possess a firearm, 18 U.S.C. 922(g), and to the list of those to whom a firearm may not lawfully be transferred, 18 U.S.C. 922(d)(pertinent text of 18 U.S.C. 921 to 925 appended).

The provision applies to misdemeanor convictions under both state and federal law and to convictions both prior and subsequent to enactment of the provision, 18 U.S.C. 921(a)(33). Under existing case law, it would appear likely to survive constitutional scrutiny. Similar provisions have been upheld in the face of challenges that they exceeded Congress' power under the commerce clause, that they were contrary to the Ninth and Tenth Amendments, or that they violated the Constitution's proscription on ex post facto laws or on denials of equal protection.

#### *Equal Protection*

Both the states and the federal government are precluded from denying anyone equal protection of the law -- the states by virtue of the equal protection

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<sup>1</sup> Pub.L.No.104-208 is not yet publicly and officially available in either printed or electronic form. The provision in question appears in the conference report of the bill that was accepted by both Houses without amendment, H.R.Rep.No. 104-863, 104th Cong., 2d Sess. at 382-83 (1996), reprinted in 142 *Cong.Rec.* H11743 (daily ed. Sept.28, 1996). It also appears, with handwritten amendments but in identical language in 9B U.S.CODE CONGRESSIONAL & ADMINISTRATIVE NEWS [1101] to [1104] (Nov.1996).

clause of the Fourteenth Amendment;<sup>2</sup> the federal government by virtue of the equal protection component of the due process clause of the Fifth Amendment.<sup>3</sup>

The Supreme Court has rejected the argument that a firearms possession ban imposed on convicted felons violates equal protection because "Congress could rationally conclude that any felony conviction, even an allegedly invalid one, is a sufficient basis on which to prohibit the possession of a firearm," *Lewis v. United States*, 445 U.S. 55, 66 (1980).

The lower federal courts have reach the same conclusion with respect to the possession ban of section 922, *United States v. Sherbondy*, 865 F.2d 996, 1003 (9th Cir. 1988), and with respect to the classification of violent as opposed to nonviolent felonies, *Cody v. United States*, 460 F.2d 34, 36n.3 (8th Cir. 1972). With this background it seems unlikely that a court would consider violent misdemeanors a suspect classification under the equal protection clause.

### *Ex Post Facto*

The Constitution outlaws both federal and state ex post facto laws.<sup>4</sup> The proscription runs to laws that "retroactively alter the definition of crimes or increase the punishment for criminal acts," *California Department of Corrections v. Morales*, 115 S.Ct. 1957, 1601 (1995).

Section 922, however, punishes not the earlier felony or violent misdemeanor offense, but firearm possession thereafter. As long as possession occurs after the ban on possession has been enacted, the fact that the predicate offense occurred prior to enactment does not trigger ex post facto concerns, *United States v. Waters*, 23 F.3d 29, 36 (2d Cir. 1994); *United States v. Brady*, 26 F.3d 282, 291 (2d Cir. 1994).<sup>5</sup>

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<sup>2</sup> "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws," U.S.Const.Amend. XIV, §1.

<sup>3</sup> "No person shall . . . be deprived of life, liberty, or property, without due process of law. . ." U.S.Const. Amend.V.; *Adarand Constructors, Inc. v. Peña*, 115 S.Ct. 2097, 2107-108 (1995).

<sup>4</sup> "No Bill of Attainder or ex post facto Law shall be passed," U.S.Const. Art.I, §9, cl.3  
 "No State shall pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility," U.S.Const. Art.I, §10, cl.1.

<sup>5</sup> "Courts have determined that congress intended statutes prohibiting felons from possessing firearms to reach 'persons convicted of felonies prior to the effective date of the statute.' *United States v. Matassini*, 565 F.2d 1297, 1307 (5th Cir. 1978)(interpreting 18 U.S.C. 1202(a)(1), the predecessor to §922(g)); see also *United States v. Jordan*, 870 F.2d 1310, 1315 (7th Cir. 1989) (although enhancement provisions of §1202 became effective in 1984, fact that defendants' underlying convictions occurred in 1970 and 1972 does not violate the Ex Post Fact clause); *United States v. Sutton*, 521 F.2d 1385, 1390 (7th Cir. 1975)(no ex post factor violation where Congress proscribes future activities of person who have in the past engaged in conduct Congress has the power to proscribe), 26 F.3d at 291.

### Commerce Clause Authority

The commerce clause empowers Congress "to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes," U.S.Const. Art.I, §8, cl.3, and to make laws necessary and proper to carry this and its other powers into execution, U.S.Const. Art.I, §8, cl.18. Although the confluence of these authorities affords Congress broad discretion, its prerogatives are not without limit. In *United States v. Lopez*, 115 S.Ct. 1624 (1995), for example, the Supreme Court held that Congress' effort to prohibit possession of a firearm on school grounds exceeded its authority under the commerce clause in that the statute in question, 18 U.S.C. 922(q), constituted neither (1) "a regulation of the use of the channels of interstate commerce," nor (2) a prohibition on "the interstate transportation of a commodity through the channels of commerce," nor (3) "a regulation by which Congress has sought to protect an instrumentality of interstate commerce or a thing in interstate commerce," nor (4) "a regulation of an activity that substantially affects interstate commerce," 115 S.Ct. at 1630.

The possession ban in the provision in question attached to a portion of section 922 that makes it unlawful for any member of one of the proscribed classes "to ship or transport *in interstate or foreign commerce*, or possess *in or affecting commerce*, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported *in interstate or foreign commerce*," 18 U.S.C. 922(g)(emphasis added).

This seems to provide a nexus to commerce that *Lopez* found wanting, or so all the federal courts of appeal to consider the question to date have concluded, *United States v. Gateward*, 84 F.3d 670, 671-72 (3d Cir. 1996); *United States v. Wells*, 98 F.3d 808, 811 (4th Cir. 1996)(citing cases from other circuits).

The disposal ban, on the other hand, makes no explicit reference to interstate or foreign commerce. It simply makes it unlawful to "sell or otherwise dispose of any firearm or ammunition" with the knowledge that the recipient is a member of one of prohibited classes, 18 U.S.C. 922(d).

The only reported federal appellate decision since *Lopez* on the issue concluded that subsection 922(d) "represents a legitimate exercise of Congress' commerce power," *United States v. Monteleone*, 77 F.3d 1086, 1091-92 (8th Cir. 1996). *Monteleone* based its conclusion on the fact (1) that "section 922(d) addresses the *disposal* of firearms, which is an inherently commercial activity;" (2) that the legislative history of subsection 922(d) demonstrates that it was enacted as "an essential part of a larger regulation of economic activity, in which the regulatory scheme could be undercut unless the intrastate activity were regulated," and (3) that "the disposal of a firearm . . . even when consummated in a completely intrastate transaction, is a commercial activity 'that might, through repetition elsewhere, substantially affect . . . interstate commerce,'" 77 F.3d at 1092, quoting *Lopez* at 1631 and 1634 respectively.

### *Ninth and Tenth Amendments*

Once it has been established that a particular statute is the valid exercise of a power that the Constitution grants the Congress, arguments under the Ninth and Tenth Amendments would seem to be foreclosed. For those Amendments, although they may inform the examination of whether a particular power lies within the reach of Congress, are, on their face, residual clauses.<sup>6</sup> They identify the repositories of those powers that the Constitution has *not* vested elsewhere, the resting places of those rights and prerogatives that remain after the store of constitutionally granted powers has been collected up, *New York v. United States*, 505 U.S. 144, 156 (1992) ("If a power is delegated to Congress in the Constitution, the Tenth Amendment expressly disclaims any reservation of that power to the States; if the power is an attribute of state sovereignty reserved by the Tenth Amendment, it is necessarily a power the Constitution has not conferred on Congress").

Both the disposal and possession bans of subsections 922(d) and 922(g) have been found to lie within the commerce clause power of Congress, and neither appears to be marked by the type of intrusion upon the rights and prerogatives, envisioned by the Ninth and Tenth Amendments, sufficient to undermine any commerce clause claim.

Several of the post-*Lopez* cases, after determining that various subsections of section 922 are appropriately within the power of Congress under the commerce clause, have gone on to reject Tenth Amendment based challenges, *United States v. Andaverde*, 64 F.3d 1305, 1310 (9th Cir. 1995)(18 U.S.C.922(g)); *United States v. Collins*, 61 F.3d 1379, 1383-384 (9th Cir. 1995)(18 U.S.C. 922(g); *United States v. Kenney*, 91 F.3d 884, 891 (7th Cir. 1996)(18 U.S.C. 922(o) (unlawful possession of machineguns)). And one has rejected a Ninth Amendment based challenge to the federal imposition of enhanced punishment for unlawful possession of a firearm under the federal sentencing guidelines, *United States v. Broussard*, 80 F.3d 1025, 1041 (5th Cir. 1996).<sup>7</sup>

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<sup>6</sup> "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people," U.S.Const. Amend.IX.

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." U.S.Const. Amend.X.

<sup>7</sup> "Merritt alternatively argues that the enhancement chills his constitutional right to possess weapons. . . . Merritt concedes that the Second Amendment . . . is inapplicable, but asserts that the right to possess weapons is among the rights reserved to citizens by the Ninth Amendment. Merritt does not point to any authority in support of his argument. [Although neither this Court nor the Supreme Court has addressed the issue of whether the Ninth Amendment encompasses a right to possess firearms, two circuits have rejected this contention. *See Quilici v. Village of Morton Grove*, 695 F.2d 261, 271 (7th Cir. 1982); *United States v. Warin*, 530 F.2d 103, 108 (6th Cir. 1976).] Nor does he advance any rationale to support his assertion that the right to possess weapons is among the rights reserved to citizens under the Ninth Amendment. . . . We are not persuaded to discover or declare a new constitutional right to possess weapons under the Ninth Amendment. . . ." 80 F.3d at 1041 (footnote 11 of the court's opinion in brackets).

The Supreme Court, however, has granted certiorari to resolve a split among the circuits over the question of whether the Tenth Amendment renders invalid the purported exercise of commerce clause power under subsection 922(o) (concerning the interim duties that fall to state officials for implementation of the so-called "Brady" law), *Printz v. United States*, 116 S.Ct. 2521 (1996).<sup>8</sup>

Since neither the bar on firearm disposal nor the bar on firearm possession in question here impose any requirements upon state officials, the Court's resolution of *Printz* seems unlikely to erode the constitutional underpinnings of subsections 922(d) and 922(g).

  
Charles Doyle  
Senior Specialist  
7-6006

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<sup>8</sup> In *Printz* and *Mack*, the Ninth Circuit held that the interim provisions that called upon local law enforcement officials to conduct background checks to determine whether firearms purchasers were members of a prohibited class did not violate the Tenth Amendment, *Mack v. United States*, 66 F.3d 1025 (9th Cir. 1995). The Fifth Circuit disagreed concluding that the background check provisions did in fact violate the Tenth Amendment, *Koog v. United States*, 79 F.3d 452 (5th Cir. 1996).

# 18 U.S.C. 921. Definitions

(a) As used in this chapter--

\* \* \*

(33)(A) *Except as provided in subparagraph [B], the term "misdemeanor crime of domestic violence" means an offense that --*

*(i) is a misdemeanor under Federal or State law; and*

*(ii) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabitated with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.*

*(B) (i) A person shall not be considered to have been convicted of such an offense for purposes of this chapter, unless --*

*(I) the person was represented by counsel in the case, or knowingly and intelligently waived the right to counsel in the case; and*

*(II) in the case of a prosecution for an offense described in this paragraph for which a person was entitled to a jury trial in the jurisdiction in which the case was tried, either*

*(aa) the case was tried by a jury, or*

*(bb) the person knowingly and intelligently waived the right to have the case tried by a jury, by guilty plea or otherwise,*

*(ii) A person shall not be considered to have been convicted of such an offense for purposes of this chapter if the conviction has been expunged or set aside, or is an offense for which the person has been pardoned or has had civil rights restored (if the law the applicable jurisdiction provides for the loss of civil rights under such an offense) unless the pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.*

# 18 U.S.C. 922. Unlawful acts

\* \* \*

(d) It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person--

(1) is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) is a fugitive from justice;

(3) is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

(4) has been adjudicated as a mental defective or has been committed to any mental institution;

(5) who, being an alien, is illegally or unlawfully in the United States;

(6) who has been discharged from the Armed Forces under dishonorable conditions;

(7) who, having been a citizen of the United States, has renounced his citizenship;

or

(8) is subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or

person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child, except that this paragraph shall only apply to a court order that--

(A) was issued after a hearing of which such person received actual notice, and at which such person had the opportunity to participate; and

(B)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

*(9) has been convicted in any court of a misdemeanor crime of domestic violence.*

This subsection shall not apply with respect to the sale or disposition of a firearm or ammunition to a licensed importer, licensed manufacturer, licensed dealer, or licensed collector who pursuant to subsection (b) of section 925 of this chapter is not precluded from dealing in firearms or ammunition, or to a person who has been granted relief from disabilities pursuant to subsection (c) of section 925 of this chapter.

\* \* \*

(g) It shall be unlawful for any person--

(1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) who is a fugitive from justice;

(3) who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

(4) who has been adjudicated as a mental defective or who has been committed to a mental institution;

(5) who, being an alien, is illegally or unlawfully in the United States;

(6) who has been discharged from the Armed Forces under dishonorable conditions;

(7) who, having been a citizen of the United States, has renounced his citizenship;

or

(8) who is subject to a court order that--

(A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

(B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(C)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

*(9) who has been convicted in any court of a misdemeanor crime of domestic violence,*

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

\* \* \*

(s)(1) Beginning on the date that is 90 days after the date of enactment of this subsection and ending on the day before the date that is 60 months after such date of enactment, it shall be unlawful for any licensed importer, licensed manufacturer, or licensed dealer to sell, deliver, or transfer a handgun (other than the return of a handgun to the person from whom it was received) to an individual who is not licensed under section 923, unless--

(A) after the most recent proposal of such transfer by the transferee--

(i) the transferor has--

(I) received from the transferee a statement of the transferee containing the information described in paragraph (3);

\* \* \*

(3) The statement referred to in paragraph (1)(A)(i)(I) shall contain only--

(A) the name, address, and date of birth appearing on a valid identification document (as defined in section 1028(d)(1)) of the transferee containing a photograph of the transferee and a description of the identification used;

(B) a statement that the transferee--

(i) is not under indictment for, and has not been convicted in any court of, a crime punishable by imprisonment for a term exceeding 1 year *and has not been convicted in any court of a misdemeanor crime of domestic violence*;

(ii) is not a fugitive from justice;

(iii) is not an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act);

(iv) has not been adjudicated as a mental defective or been committed to a mental institution;

(v) is not an alien who is illegally or unlawfully in the United States;

(vi) has not been discharged from the Armed Forces under dishonorable conditions; and

(vii) is not a person who, having been a citizen of the United States, has renounced such citizenship;

\* \* \*

## 18 U.S.C. 924. Penalties

\* \* \*

(2) Whoever knowingly violates subsection (a)(6), (d), (g), (h), (i), (j), or (o) of section 922 shall be fined as provided in this title, imprisoned not more than 10 years, or both.

(3) Any licensed dealer, licensed importer, licensed manufacturer, or licensed collector who knowingly--

(A) makes any false statement or representation with respect to the information required by the provisions of this chapter to be kept in the records of a person licensed under this chapter, or

(B) violates subsection (m) of section 922,

shall be fined under this title, imprisoned not more than one year, or both.

\* \* \*

(5) Whoever knowingly violates subsection (s) or (t) of section 922 shall be fined under this title, imprisoned for not more than 1 year, or both.

\* \* \*

#### 18 U.S.C. 925. Exceptions: Relief from disabilities

(a)(1) The provisions of this chapter, except for *sections 922(d)(9) and 922(g)(9) and provisions relating to firearms subject to the prohibitions of section 922(p)*, shall not apply with respect to the transportation, shipment, receipt, possession, or importation of any firearm or ammunition imported for, sold or shipped to, or issued for the use of, the United States or any department or agency thereof or any State or any department, agency, or political subdivision thereof.

(2) The provisions of this chapter shall not apply with respect to (A) the shipment or receipt of firearms or ammunition when sold or issued by the Secretary of the Army pursuant to section 4308 of title 10, and (B) the transportation of any such firearm or ammunition carried out to enable a person, who lawfully received such firearm or ammunition from the Secretary of the Army, to engage in military training or in competitions.

(3) Unless otherwise prohibited by this chapter or any other Federal law, a licensed importer, licensed manufacturer, or licensed dealer may ship to a member of the United States Armed Forces on active duty outside the United States or to clubs, recognized by the Department of Defense, whose entire membership is composed of such members, and such members or clubs may receive a firearm or ammunition determined by the Secretary of the Treasury to be generally recognized as particularly suitable for sporting purposes and intended for the personal use of such member or club.

(4) When established to the satisfaction of the Secretary to be consistent with the provisions of this chapter and other applicable Federal and State laws and published ordinances, the Secretary may authorize the transportation, shipment, receipt, or importation into the United States to the place of residence of any member of the United States Armed Forces who is on active duty outside the United States (or who has been on active duty outside the United States within the sixty day period immediately preceding the transportation, shipment, receipt, or importation), of any firearm or ammunition which is (A) determined by the Secretary to be generally recognized as particularly suitable for sporting purposes, or determined by the Department of Defense to be a type of firearm normally classified as a war souvenir, and (B) intended for the personal use of such member.

(5) For the purpose of paragraphs (3) and (4) of this subsection, the term "United States" means each of the several States and the District of Columbia.

(b) A licensed importer, licensed manufacturer, licensed dealer, or licensed collector who is indicted for a crime punishable by imprisonment for a term exceeding one year, may, notwithstanding any other provision of this chapter, continue operation pursuant to his existing license (if prior to the expiration of the term of the existing license timely application is made for a new license) during the term of such indictment and until any conviction pursuant to the indictment becomes final.

(c) A person who is prohibited from possessing, shipping, transporting, or receiving firearms or ammunition may make application to the Secretary for relief from the disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, transportation, or possession of firearms, and the Secretary may grant such relief if it is established to his satisfaction that the circumstances regarding the disability, and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief would

not be contrary to the public interest. Any person whose application for relief from disabilities is denied by the Secretary may file a petition with the United States district court for the district in which he resides for a judicial review of such denial. The court may in its discretion admit additional evidence where failure to do so would result in a miscarriage of justice. A licensed importer, licensed manufacturer, licensed dealer, or licensed collector conducting operations under this chapter, who makes application for relief from the disabilities incurred under this chapter, shall not be barred by such disability from further operations under his license pending final action on an application for relief filed pursuant to this section. Whenever the Secretary grants relief to any person pursuant to this section he shall promptly publish in the Federal Register notice of such action, together with the reasons therefor.

(d) The Secretary shall authorize a firearm or ammunition to be imported or brought into the United States or any possession thereof if the firearm or ammunition--

(1) is being imported or brought in for scientific or research purposes, or is for use in connection with competition or training pursuant to chapter 401 of title 10;

(2) is an unserviceable firearm, other than a machinegun as defined in section 5845(b) of the Internal Revenue Code of 1954 (not readily restorable to firing condition), imported or brought in as a curio or museum piece;

(3) is of a type that does not fall within the definition of a firearm as defined in section 5845(a) of the Internal Revenue Code of 1954 and is generally recognized as particularly suitable for or readily adaptable to sporting purposes, excluding surplus military firearms, except in any case where the Secretary has not authorized the importation of the firearm pursuant to this paragraph, it shall be unlawful to import any frame, receiver, or barrel of such firearm which would be prohibited if assembled; or

(4) was previously taken out of the United States or a possession by the person who is bringing in the firearm or ammunition.

The Secretary shall permit the conditional importation or bringing in of a firearm or ammunition for examination and testing in connection with the making of a determination as to whether the importation or bringing in of such firearm or ammunition will be allowed under this subsection.

(e) Notwithstanding any other provision of this title, the Secretary shall authorize the importation of, by any licensed importer, the following:

(1) All rifles and shotguns listed as curios or relics by the Secretary pursuant to section 921(a)(13), and

(2) All handguns, listed as curios or relics by the Secretary pursuant to section 921(a)(13), provided that such handguns are generally recognized as particularly suitable for or readily adaptable to sporting purposes.

(f) In the case of a person who knowingly violates section 922(p), such person shall be fined under this title, or imprisoned not more than 5 years, or both.

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FIREARMS LEGISLATION TASK FORCE  
CHAIRMAN



DEC 10 1996

Congress of the United States  
House of Representatives  
Washington, DC 20515

December 6, 1996

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AND MEMORIAL AFFAIRS

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Denver Police Protective Association  
2105 Decatur Street  
Denver, CO 80211

IN RE: "Lautenberg" Domestic Violence Amendment

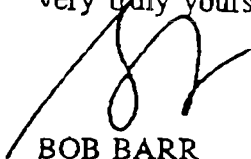
Dear Bill:

I enjoyed speaking with you this afternoon, concerning the problems with the so-called "Lautenberg Amendment"; specifically problems it is already causing for law enforcement personnel, most notably the Administration's effort to apply it retroactively. I look forward to receiving material from you that will help me address these issues, as I intend to do, early in the 105th Congress which convenes January 7th.

I am enclosing, per our discussion, copies of letters I have already generated that bear directly on our discussion.

Looking forward to hearing from, and working with you, I am,

very truly yours,

  
BOB BARR  
Member of Congress

cc: Hon. Scott McInnis

5 Dec 1996 17:33

Page 2 of 2

NEWS FROM U.S. REPRESENTATIVE BOB BARR

FOR IMMEDIATE RELEASE:  
THURSDAY, DECEMBER 5, 1996

CONTACT: CARTER CORNICK  
202-225-2931

BARR CALLS FOR CONGRESSIONAL HEARINGS ON NEW DOMESTIC VIOLENCE  
LAW

REJECTS NEW ADMINISTRATION EFFORT TO APPLY LAW RETROACTIVELY

U.S. Representative Bob Barr (GA-7) is urging Congress to reexamine the newly passed law (originally passed by the Senate as the Lautenberg Amendment) which seeks to curb domestic violence by denying gun ownership to persons convicted of misdemeanor domestic violence crimes. Reaffirming his general support for the legislation, Barr has written letters to House Judiciary Committee Chairman Henry Hyde and Crime Subcommittee Chairman Bill McCollum stating, "Numerous provisions in the Omnibus Consolidated Appropriations Act of 1997 were rushed through the Congress in the waning hours of the session that received no Judiciary Committee review, including one impacting police officers and military personnel that potentially has immediate impact on public safety."

"Just this week the Administration has issued written notification of its intent to contravene the Constitution of the United States and ignore the desire of Congress by applying retroactively provisions of the Lautenberg Amendment," stated Barr. His comments were prompted by papers issued by the Department of the Treasury through the Bureau of Alcohol, Tobacco and Firearms, which clearly state the domestic violence prohibitions on gun ownership apply "even if the conviction occurred prior to the new law's effective date, September 30, 1996."

In his letter to the Judiciary chairmen Barr said, "I am adamantly opposed to retroactive application of the statute and consider the White House to be operating outside the boundary of the law in this area. In this regard, I have serious concerns as well the Administration is on the road to misapplying the exemption provisions which state that the denial of Second Amendment rights will apply to officers and the military."

"How this new law is applied is critical," continued Barr. "It may well be the case that legitimate public safety and other mitigating factors for the law's application to law enforcement and military personnel have not been properly accounted for because Congress was prevented from considering the domestic violence legislation in the appropriate and proper deliberative fashion. For these reasons, I respectfully request that you schedule hearings to deal with these issues as early as possible in the 105th Congress."

BOB BARR  
7TH DISTRICT, GEORGIA

1807 LONGWORTH HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515  
PHONE: (202) 225-2931  
FAX: (202) 225-2864

FIREARMS LEGISLATION TASK FORCE  
CHAIRMAN



Congress of the United States  
House of Representatives  
Washington, DC 20515

December 5, 1996

NO. 476 UOI  
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COMPENSATION, PENSION, INSURANCE,  
AND MEMORIAL AFFAIRS

The Honorable Henry J. Hyde  
Chairman, Committee on the Judiciary  
2110 Rayburn HOB  
Washington, D.C. 20515

In Re: Retroactivity & Administration Application of Lautenberg

Dear Henry:

Numerous provisions in the Omnibus Consolidated Appropriations Act of 1997 were rushed through the Congress in the waning hours of the session that received no Judiciary Committee review, including one impacting police officers and military personnel that potentially has immediate impact on public safety. I refer to the Lautenberg Amendment and specifically Subsection (c), "Government Entities Not Excepted," of Section 658, "Gun Ban for Individuals Convicted of a Misdemeanor Crime of Domestic Violence."

As you may recall, Senator Lautenberg's amendment was poorly drafted and suffered from fatal constitutional problems. In short, the language was too vague and, by relying entirely on differing definitions of crimes of domestic violence in the different states clearly raised the specter of unequal protection and vagueness. Under enormous pressure to resolve the problems with the bill, many of us worked to improve Lautenberg's amendment which in its final form included Subsection (c).

Just this week the Administration issued, through Treasury's Bureau of Alcohol, Tobacco and Firearms, "Open Letters" apparently sent to law enforcement agencies and gun dealers across the country and to the public generally, regarding application of the new law. The "Open Letters" clearly state the domestic violence prohibitions on gun ownership apply "even if the conviction occurred prior to the new law's effective date, September 30, 1996" (emphasis added). In my judgment, our Constitution explicitly prohibits ex post facto application of the law and is contrary to congressional intent.

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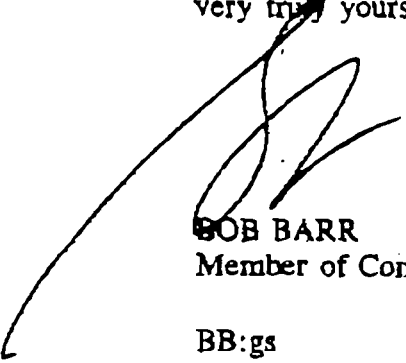
The Honorable Henry J. Hyde  
December 5, 1996  
Page Two

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Thank you for your attention to this matter. As always, with warm regards, I am,

very truly yours,



BOB BARR  
Member of Congress

BB:gs

cc: The Honorable Bill McCollum

BOB BARR  
7th District, Georgia

1807 LONGWORTH HOUSE OFFICE BUILDING  
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FIREARMS LEGISLATION TASK FORCE  
CHAIRMAN



Congress of the United States  
House of Representatives  
Washington, DC 20515

December 5, 1996

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COMPENSATION, PENSION, INSURANCE,  
AND MEMORIAL AFFAIRS

The Honorable Bill McCollum  
House of Representatives  
2266 Rayburn HOB  
Washington, D.C. 20515

In Re: Retroactivity & Administration Application of Lautenberg

Dear Bill:

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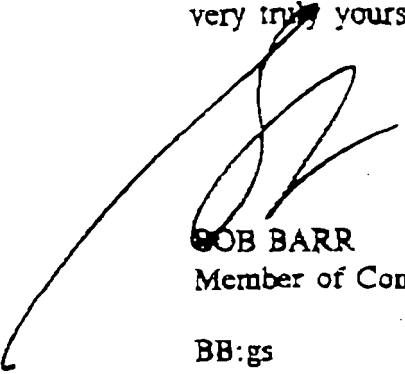
The Honorable Bill McCollum  
December 5, 1996  
Page Two

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Thank you for your attention to this matter. As always, with warm regards, I am,

very truly yours,



BOB BARR

Member of Congress

BB:gs

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FIREARMS LEGISLATION TASK FORCE  
CHAIRMAN



Congress of the United States  
House of Representatives  
Washington, DC 20515

December 5, 1996

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AND MEMORIAL AFFAIRS

The Honorable Robert Rubin  
Secretary  
U.S. Treasury Department  
15th Pennsylvania Avenue  
Washington, D.C. 20220

In Re: Retroactivity & Administration Application of Lautenberg

Dear Secretary Rubin:

It has been two months since I wrote you on a critical matter involving the issue of retroactivity and the application of the Lautenberg Amendment, Section 658 of the Omnibus Consolidated Appropriations Act of 1997.

Instead of a reply, my office has come across "Open Letters" your department issued through the Bureau of Alcohol, Tobacco and Firearms (ATF) that amount to little more than "scare pieces" threatening gun dealers, the public generally, and state and local law enforcement officers with loss of their livelihood.

I will appreciate your immediate, substantive reply to my letter. Discussions I have had with the ATF have left me confused, and extremely concerned, as to the Administration position on ex post facto application of the law as it relates to the Lautenberg Amendment.

Sincerely,

Sincerely,

BOB BARR  
Member of Congress

BB:cc

BUD BARR  
7TH DISTRICT, GEORGIA

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FIREARMS LEGISLATION TASK FORCE  
CHAIRMAN



Congress of the United States  
House of Representatives  
Washington, DC 20515

December 5, 1996

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AND MEMORIAL AFFAIRS

The Honorable Janet Reno  
United States Attorney General  
United States Department of Justice  
Washington, D.C. 20530

In Re: Retroactivity & Administration Application of Lautenberg

Dear Attorney General Reno:

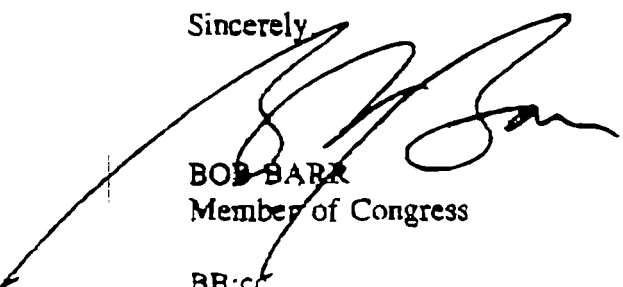
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Instead of a reply, my office has come across "Open Letters" Treasury issued through the Bureau of Alcohol, Tobacco and Firearms (ATF) that amount to little more than "scare pieces" threatening gun dealers, the public generally, and state and local law enforcement officers with loss of their livelihood.

I will appreciate your immediate, substantive reply to my letter. Discussions I have had with the ATF have left me confused, and extremely concerned, as to the Administration position on ex post facto application of the law as it relates to the Lautenberg Amendment.

Furthermore, I understand that the Department of Defense has written for your opinion as to how this law applies to military personnel. Obviously, this matter is extremely important, and I await your response.

Sincerely,

  
BOB BARR  
Member of Congress

BB:cc

CONSTITUTION  
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BOB BARR  
7TH DISTRICT, GEORGIA

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FIREARMS LEGISLATION TASK FORCE  
CHAIRMAN



Congress of the United States  
House of Representatives  
Washington, DC 20515

October 8, 1996

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The Honorable Robert Rubin  
Secretary  
U.S. Treasury Department  
15th Pennsylvania Avenue  
Washington, D.C. 20220

IN RE: APPLICATION OF LAUTENBERG AMENDMENT

Dear Secretary Rubin:

As you know, the Congress has passed legislation to curb domestic violence by denying gun ownership to certain new categories of offenders. The legislation, which has been signed by the President as part of the Fiscal year 1997 omnibus appropriations bill, requires that the Bureau of Alcohol, Tobacco and Firearms promulgate implementing regulations promptly.

I believe it is incumbent that the BATF, in coordination with the Department of Justice, consult with the Administrative Office of the U. S. Courts, the federal and state court systems, and the firearms industry, to develop a constitutionally sound, and practical approach to the new law's implementation.

It is patently obvious, for example, that citizens need to be fairly put on notice as to the law's implications. This not only follows from the Constitutional requirement prohibiting ex post facto application of criminal laws -- e.g. Weaver v. Graham, 450 U.S. 24 (1981); and Miller v. Florida, 482 U.S. 423 (1987) -- but also from the practicalities of equitable enforcement. In Weaver v. Graham the Court set forth the critical question to be asked in evaluating an ex post facto claim: "whether the law changes the legal consequences of acts completed before its effective date." The retroactive application of the firearms disability provision of the Lautenberg Amendment does just this, since defendants previously convicted or convicted immediately prior to the implementation of this statute, of misdemeanor offenses which meet the definition of a misdemeanor crime

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"involving domestic violence," would be faced with a permanent loss of a civil right without receiving any reasonable notice of or hearing on this constitutional deprivation.

Similarly, in *Miller v. Florida*, concerning a state statute altering sentencing guidelines, the Supreme Court found that petitioner was "substantially disadvantaged" by a new law since he could receive a penalty prohibited under an old law. *Id.*

As in these cases, this new restriction on the right to possession of firearms operates as an impermissible punishment and not merely as an additional regulatory measure. Insofar as the misdemeanor laws of the states vary widely, with many such violations adjudicated by non-courts of record, it is imperative that the law be applied prospectively only. Otherwise, scores of citizens could be subject to prosecution as felons for unwittingly filling out a Form 4473, Federal Firearm Transaction Form, incorrectly.

I know there may have been instances in the past where the courts have upheld retroactive application of provisions that disable citizens from their Second Amendment rights. Under the Lautenberg misdemeanor provisions, however, it is critical that the mechanics of fair and equitable enforcement be properly put in place before the liberties of citizens are put in jeopardy. In these circumstances, both the Constitution and sound administrative practice compel a soundly crafted prospective application of the law's requirements.

As the regulatory process unfolds, I along with many of my colleagues, will closely monitor the manner in which the BATF addresses the new law. We fully expect the Administration will apply this law prospectively, rather than retroactively, in furtherance of Congressional expression and faithful to Constitutional safeguards.

The Honorable Robert Rubin  
December 6, 1996  
Page Three

I look forward to hearing from you on this matter.

With warm regards, I am,

very truly yours,

A handwritten signature consisting of a stylized 'B' and 'R' with a diagonal line through them.

BOB BARR  
Member of Congress

BB:gs

cc: The Honorable Newt Gingrich  
The Honorable Dick Armey  
The Honorable Tom DeLay  
The Honorable John Boehner  
The Honorable Chris Cox

# DENVER AND THE WEST

Thursday, December 5, 1996

SECTION B ★

## Police may seek gun-ban b

By Peter G. Chronis  
and Marilyn Robinson  
Denver Post Staff Writers

A Denver police union, representing two officers who had to turn in their guns, said yesterday it may seek a federal court injunction to block a new federal law that bans people convicted of domestic violence misdemeanors from possessing firearms or ammunition.

Meantime, the office of Rep. Bob Barr,

### Retroactive aspect of law challenged

R-Georgia, who helped draft the amendment to the Gun Control Act of 1968, made it clear that the new law wasn't intended to be retroactive.

But the U.S. Bureau of Alcohol, Tobacco and Firearms said in a Nov. 27 letter sent

to law enforcement agencies that the ban would apply even on convictions that occurred before the law was enacted Sept. 30.

Several Denver-area lawyers said the ex-post-facto ban may be a constitutional

problem.

At least two Denver officers — Detective James A. Hull and Officer Alex Woods Jr. — had to surrender their guns Monday because they have domestic-violence convictions.

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 7/27

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 Advisory Committee  
 is sponsoring a free  
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 of students with spe-  
 ds. from 6:15 to 7:30 p.m. to  
 Aurora Public School's Centre  
 Building, 16700 E. First Ave. Call  
 10/Ext. 444

**NOTE:** If you know of news for  
 your press write the Denver Post,  
 1560 Broadway, Denver 80202  
 on the envelope. Notices  
 are sent at least 10 days ahead.

# Police union may seek block on gun-ban law

GUNS from Page 1B

A congressional aide said Barr re-wrote Democratic New Jersey Sen. Frank Lautenberg's original version of the amendment because it was "on its face unconstitutional, it was so broadly written." The version passed requires an actual act of violence against a victim or a threat with a deadly weapon, the aide said.

Barr said in an Oct. 8 letter to Treasury Secretary Robert Rubin that "we fully expect that the administration will apply this law prospectively, rather than retroactively, in furtherance of congressional expression and faithful to congressional safeguards."

## 'Double Jeopardy' concerns

And some Denver-area lawyers expressed concerns about the impact of the new law.

"I think it's got serious double jeopardy problems with the retroactivity," said Denver defense attorney David A. Lane. "They cannot impose punishments on you that did not exist at the time that you allegedly committed your crime."

Lane added that he thinks the retroactive aspect probably would be tossed out.

"We've had several law enforcement officers that we've represented over the years," said defense attorney Craig Trueman, "and yesterday and today, they're all calling in to make sure they're safe."

"I'm getting calls," said Englewood lawyer Frank McKibben, "from guys saying, 'I've got to give away thousands of dollars worth of guns, and there was no violence, and I don't know how to prove it.'"

## More cases likely to trial

The new law "presents some interesting questions," he said. "I'm sure there will be litigation. Is it ex-post-facto additional punishment and so forth?" Because of the potential impact on gun ownership, more domestic violence cases are likely to go to trial, he predicted.

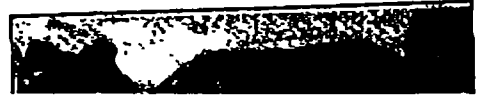
Although several metro-area police and sheriff's departments have been checking to see if their officers have domestic violence convictions, Pueblo Police Chief Ruben Archuleta said yesterday he will not check the backgrounds of his 184 sworn officers to see if they have been involved in domestic violence situations until the constitutionality of the law has been tested.

Denver Post correspondent Jim Mallory contributed to this report.

# CADILLAC OWNERS, WE CARS IN THE GARAGE and New Cadillac Sale!

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## E X E C U T I V E   O F F I C E   O F   T H E   P R E S I D E N T

06-Dec-1996 06:19pm

TO:            Bruce N. Reed  
TO:            Michelle Crisci  
TO:            Christa T. Robinson  
TO:            Leanne A. Shimabukuro  
TO:            Peter G. Jacoby

FROM:          Dennis Burke  
                Domestic Policy Council

SUBJECT:      THOUSANDS OF POLICE, MILITARY TROOPS MAY BE FEDERAL LAW:...

Date: 12/06/96    Time: 17:41

DThousands of Police, Military Troops May Be Federal Law Violators

Law officers and military personnel who have been convicted of domestic violence are breaking a new federal law every time they pick up a gun.

With federal, state and local law officers totaling about 700,000, and with 1.2 million Americans serving in the military, some criminal justice experts say the law breakers could number in the thousands.

The new law, tucked into a federal spending bill that went into effect Sept. 30, applies to anyone convicted of a misdemeanor for using or attempting to use physical force on an intimate partner or a family member.

It gives no exemption to the military or law officers, for most of whom a gun is a job requirement. In most states, crimes of domestic violence are prosecuted as misdemeanors.

The law applies equally to private citizens and to FBI and Treasury agents, the Secret Service and U.S. marshals, jail guards and state troopers, housing police and campus security, and every local police officer from chiefs to cops on the beat.

Spot checks by The Associated Press found many law enforcement agencies still unaware of the law this week. This, despite an open letter to all local and state law enforcement officials on Nov. 26 from John Magaw, director of the federal Bureau of Alcohol, Tobacco and Firearms.

Officers convicted of a domestic violence misdemeanor, Magaw advised, "must immediately dispose of all firearms and ammunition in their possession."

On Friday, the Justice Department ordered all federal government employees authorized to possess firearms to immediately return their weapons to their supervisor if they have a conviction.

All federal agents will be required to sign a document within 10 days stating they were never convicted of a misdemeanor crime of

domestic violence, said Gregory King, a Justice Department spokesman. Lying on that form would be a federal crime.

Few agencies, it seems, know how many of their employees have been found guilty of domestic violence misdemeanors.

"It isn't something you can just look up. Often, misdemeanor convictions are not listed on rap sheets," King said.

Air Force Maj. Monica Aloisio, a Defense Department spokesperson, said, "We are not in compliance with the law, and we know we're not in compliance with the law."

Some law enforcement agencies are simply hoping the guilty will come forward and turn in their weapons. In others, a few officers have already been disarmed.

In Denver, Officer Alex Woods Jr., convicted last year of assaulting his girlfriend, was one of two officers who surrendered their guns Monday.

Woods, 25, turned his three handguns and a shotgun over to his father, homicide Detective Alex Woods Sr., and was temporarily assigned to working with equipment.

The young officer didn't return a reporter's phone call. His father said victims will be fearful of reporting domestic violence when it might cost their spouses their jobs.

The younger Woods's former girlfriend, Mary Taylor, 28, said from her home in Aurora, Colo., she's glad the law was enacted.

"It's a step in the right direction for domestic violence," she said. "It's not going to stop it, but it's going to prevent people at least from being shot."

Around the country, other police departments say they are beginning to act. In Los Angeles, five sheriff's deputies have been disarmed and in Nashville, Tenn., one officer's case is being reviewed.

Other agencies, including the Chicago Police Department and the Texas Department of Public Safety, said none of their officers would be affected.

One unanswered question is what will happen to law enforcement officers and soldiers who can no longer carry guns.

The Pentagon says it is waiting for advice from the Justice Department on how to apply the law.

Michigan State University Professor David Carter, an expert on police and a former patrolman in Kansas City, Mo., said he has talked about the new law with police chiefs around the country.

"Most of them were saying, 'If we only have two or three people, we can reassign them, but if I have more than that, I don't know what I'll do,'" Carter said.

Victor Kappeler, head of the Criminal Justice Graduate Program at Eastern Kentucky University and an expert on police, estimates 1,000 law enforcement officials would be affected. Carter called the estimate "conservative, but safe."

Police interviewed disagree about the new law. Some see it as unfair; other see it as the right thing to do.

Pete Brodie, president of the Association for Los Angeles Deputy Sheriffs:

"You don't see them going after butchers and taking their knives away when they have some type of dispute, or plumbers taking their wrenches away. It seems like they're targeting us."

Miami Police Maj. Bill O'Brien:

"Domestic violence is obviously an incredible problem in our country. It's a strong act that's called for. ... It's not the first time police officers are held to a higher standard, and I don't feel it's totally inappropriate."

Meanwhile, the congressman who ensured that the new law made no exceptions for police and the military says he is unhappy with one part of it.

Rep. Bob Barr, R-Ga., still thinks no one convicted of domestic violence should have a gun, but he doesn't think it is fair to apply the law to people who committed their crimes before it was passed.

"I don't think that any police officer, or any citizen, ought to be subjected to retroactive penalties," he said.

APNP-12-06-96 1745EST



■ UNITED STATES SENATOR ■

# Frank Lautenberg

NEW JERSEY

For Immediate Release  
January 8, 1997

For Further Information  
Ken Jaques (202) 224-9704

**Statement of Senator Frank R. Lautenberg opposing  
legislation that would gut domestic violence gun ban law**

It is outrageous to propose that every currently-convicted wife beater and child abuser be allowed to have a gun. The lives of thousands of battered women and abused children are at stake. These entirely innocent and vulnerable Americans deserve protection.

Congress did not mean to excuse all currently-convicted offenders from the domestic violence gun ban. This issue was discussed very explicitly on the Senate floor. Although gun ban opponents initially floated a proposal that, in effect, would have let currently-convicted abusers off the hook, they never offered that amendment. And it was very clear to all involved that the domestic violence gun ban -- just like the prohibition against gun possession by felons, dishonorable dischargees, and drug users -- applies to all offenders. The courts have repeatedly upheld the constitutionality of these other prohibitions, and the Congressional Research Service confirms that there is little question that the new ban is constitutional.

Gun ban opponents, at the last minute, insisted on inserting into the law a provision that exempts covered offenders from a provision of the Gun Control Act that generally excludes government entities from the Act. There are legitimate questions about the effect of this last minute insertion on the military, our intelligence agencies, and a whole range of federal agencies, including the Immigration and Naturalization Service, the Drug Enforcement Administration, the Customs Service, and other federal agencies, as well as some police agencies. Those questions need to be studied carefully. However, it is ridiculous to suggest that we need to allow all wife beaters and child abusers to have guns in order to protect public safety.

# CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I (a) PLAINTIFFS

THE FRATERNAL ORDER OF POLICE

## DEFENDANTS

UNITED STATES OF AMERICA

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Washington  
(EXCEPT IN U.S. PLAINTIFF CASES) DC

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Ellen A. Efros  
Vorys, Sater, Seymour & Pease  
1828 L Street, NW, 11th Floor  
Washington, DC 20036  
202-467-8800

ATTORNEYS (IF KNOWN)

Eric H. Holder, Jr.

## II. BASIS OF JURISDICTION

(PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff  
☒ 2 U.S. Government Defendant  
☐ 3 Federal Question (U.S. Government Not a Party)  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- |                                         | PTF                        | DEF                        |                                                               | PTF                        | DEF                        |
|-----------------------------------------|----------------------------|----------------------------|---------------------------------------------------------------|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation                                                | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)

DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

28 U.S.C. Sec. 2201 Complaint alleges a case of

actual controversy with adversarial parties and seeks declaratory and injunctive relief

## V. NATURE OF SUIT

(PLACE AN X IN ONE BOX ONLY)

| CONTRACT                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | TORTS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | FORFEITURE/PENALTY                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | BANKRUPTCY                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | OTHER STATUTES                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
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| <input type="checkbox"/> 110 Insurance<br><input type="checkbox"/> 120 Marine<br><input type="checkbox"/> 130 Water Act<br><input type="checkbox"/> 140 Negotiable Instrument<br><input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment<br><input type="checkbox"/> 151 Medicare Act<br><input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)<br><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits<br><input type="checkbox"/> 160 Stockholders' Suits<br><input type="checkbox"/> 190 Other Contract<br><input type="checkbox"/> 195 Contract Product Liability | <b>PERSONAL INJURY</b><br><input type="checkbox"/> 310 Airplane<br><input type="checkbox"/> 315 Airplane Product Liability<br><input type="checkbox"/> 320 Assault, Libel & Slander<br><input type="checkbox"/> 330 Federal Employers' Liability<br><input type="checkbox"/> 340 Marine<br><input type="checkbox"/> 345 Marine Product Liability<br><input type="checkbox"/> 350 Motor Vehicle<br><input type="checkbox"/> 355 Motor Vehicle Product Liability<br><input type="checkbox"/> 360 Other Personal Injury | <b>PERSONAL INJURY</b><br><input type="checkbox"/> 362 Personal Injury—Med Malpractice<br><input type="checkbox"/> 365 Personal Injury—Product Liability<br><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability<br><b>PERSONAL PROPERTY</b><br><input type="checkbox"/> 370 Other Fraud<br><input type="checkbox"/> 371 Truth in Lending<br><input type="checkbox"/> 380 Other Personal Property Damage<br><input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 610 Agriculture<br><input type="checkbox"/> 620 Other Food & Drug<br><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881<br><input type="checkbox"/> 630 Liquor Laws<br><input type="checkbox"/> 640 R.R. & Truck<br><input type="checkbox"/> 650 Airline Regs<br><input type="checkbox"/> 660 Occupational Safety/Health<br><input type="checkbox"/> 690 Other<br><b>LABOR</b><br><input type="checkbox"/> 710 Fair Labor Standards Act<br><input type="checkbox"/> 720 Labor/Mgmt. Relations<br><input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act<br><input type="checkbox"/> 740 Railway Labor Act<br><input type="checkbox"/> 790 Other Labor Litigation<br><input type="checkbox"/> 791 Empl. Ret. Inc. Security Act | <input type="checkbox"/> 422 Appeal 28 USC 158<br><input type="checkbox"/> 423 Withdrawal 28 USC 157<br><b>PROPERTY RIGHTS</b><br><input type="checkbox"/> 820 Copyrights<br><input type="checkbox"/> 830 Patent<br><input type="checkbox"/> 840 Trademark<br><b>SOCIAL SECURITY</b><br><input type="checkbox"/> 861 HIA (1395a)<br><input type="checkbox"/> 862 Black Lung (923)<br><input type="checkbox"/> 863 DWC/DWW (405(g))<br><input type="checkbox"/> 864 SSID Title XVI<br><input type="checkbox"/> 865 RSI (405(g))<br><b>FEDERAL TAX SUITS</b><br><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)<br><input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | <input type="checkbox"/> 400 State Reapportionment<br><input type="checkbox"/> 410 Antitrust<br><input type="checkbox"/> 430 Banks and Banking<br><input type="checkbox"/> 450 Commerce/ICC Rates/etc.<br><input type="checkbox"/> 460 Deportation<br><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations<br><input type="checkbox"/> 810 Selective Service<br><input type="checkbox"/> 850 Securities/Commodities/Exchange<br><input type="checkbox"/> 875 Customer Challenge 12 USC 3410<br><input type="checkbox"/> 891 Agricultural Acts<br><input type="checkbox"/> 892 Economic Stabilization Act<br><input type="checkbox"/> 893 Environmental Matters<br><input type="checkbox"/> 894 Energy Allocation Act<br><input type="checkbox"/> 895 Freedom of Information Act<br><input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice<br><input type="checkbox"/> 950 Constitutional of State Statutes<br><input checked="" type="checkbox"/> 890 Other Statutory Actions |
| <b>REAL PROPERTY</b><br><input type="checkbox"/> 210 Land Condemnation<br><input type="checkbox"/> 220 Foreclosure<br><input type="checkbox"/> 230 Rent Lease & Ejectment<br><input type="checkbox"/> 240 Torts to Land<br><input type="checkbox"/> 245 Tort Product Liability<br><input type="checkbox"/> 290 All Other Real Property                                                                                                                                                                                                                                                                                                        | <b>CIVIL RIGHTS</b><br><input type="checkbox"/> 441 Voting<br><input type="checkbox"/> 442 Employment<br><input type="checkbox"/> 443 Housing/Accommodations<br><input type="checkbox"/> 444 Welfare<br><input type="checkbox"/> 440 Other Civil Rights                                                                                                                                                                                                                                                              | <b>PRISONER PETITIONS</b><br><input type="checkbox"/> 510 Motions to Vacate Sentence<br>Habeas Corpus:<br><input type="checkbox"/> 530 General<br><input type="checkbox"/> 535 Death Penalty<br><input type="checkbox"/> 540 Mandamus & Other<br><input type="checkbox"/> 550 Other                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |

## VI. ORIGIN

(PLACE AN X IN ONE BOX ONLY)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify) \_\_\_\_\_  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

## VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION  
☐ UNDER F.R.C.P. 23

DEMAND \$

Check YES only if demanded in complaint:

JURY DEMAND: ☐ YES ☒ NO

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE

SIGNATURE OF ATTORNEY OF RECORD

January 21, 1997

Ellen Efros

UNITED STATES DISTRICT COURT

Category in which case belongs:

- ☐ A. Anti-Trust Cases
- ☐ B. Malpractice Cases (Legal/Medical)
- ☒ D. Temporary Restraining Orders and Preliminary Injunctions (If a TRO is requested in an Anti-Trust or Labor Relations Case, the A or C designation will govern).
- ☐ E. General Civil Cases
- ☐ F. Pro Se General Civil Cases
- ☐ G. Habeas Corpus Cases
- ☐ H. Equal Employment Opportunity Cases (If filed by a pro se litigant, the case is to be assigned from this H Category).
- ☐ I. Freedom of Information Act Cases (If filed by a pro se litigant, the case is to be assigned from this I Category).

# United States District Court for the District of Columbia

THE FRATERNAL ORDER OF POLICE

Plaintiff

vs

UNITED STATES OF AMERICA

Defendant

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:  
:

Civil Action No. \_\_\_\_\_

## CERTIFICATE RULE 109

I, the undersigned, counsel of record for The Fraternal Order of Police,  
certify that to the best of my knowledge and belief, the following  
are parent companies, subsidiaries or affiliates of The Fraternal  
Order of Police which have any outstanding securities in  
the hands of the public. None

These representations are made in order that judges of this  
court may determine the need for recusal.

Attorney of Record

Ellen A. Efros

Signature

Ellen A. Efros

Print Name

Vorys, Sater, Seymour & Pease  
1828 L Street, NW 11th Floor

Address

Washington DC 20036

City State Zip Code

202-467-8800

Phone Number

250746

BAR IDENTIFICATION NO.

UNITED STATES DISTRICT COURT  
DISTRICT OF COLUMBIA

FRATERNAL ORDER OF POLICE,  
309 Massachusetts Avenue, NW  
Washington, DC 20002

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

Civil Action No. \_\_\_\_\_

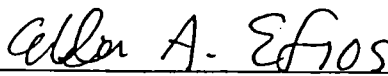
**MOTION FOR APPEARANCE OF COUNSEL PRO HAC VICE**

Pursuant to and in accordance with this Court's Local Rule 104, Plaintiff Fraternal Order of Police ("FOP") hereby moves and applies for permission for William J. Friedman to appear pro hac vice, and participate in this case as counsel for FOP for all purposes, including but not limited to pleadings, arguments, pretrial proceedings, and the trial of this action. In support of this motion, FOP respectfully refers the Court to the attached Memorandum.

Respectfully submitted,

FRATERNAL ORDER OF POLICE.

Dated: January 21, 1997

  
Ellen A. Efros D.C. Bar No. 250746  
Timothy N. McGarey D.C. Bar No. 420598  
VORYS, SATER, SEYMOUR AND PEASE  
1828 L. Street, NW Suite 1111  
Washington, DC 20036

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
DISTRICT OF COLUMBIA

FRATERNAL ORDER OF POLICE,  
309 Massachusetts Avenue, NW  
Washington, DC 20002

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

Civil Action No. \_\_\_\_\_

**MEMORANDUM IN SUPPORT OF  
MOTION FOR APPEARANCE OF COUNSEL PRO HAC VICE**

Undersigned counsel hereby represents to the Court that William A. Friedman has been a member in good standing of the Bar of New Mexico since 1989. Mr. Friedman has been admitted to practice before the District Court in New Mexico, the U.S. Court of Appeals for the Tenth Circuit, and the Supreme Court of the State of New Mexico.

**WHEREFORE,** Plaintiff Fraternal Order of Police respectfully requests that the Court enter an Order authorizing and granting leave for William A. Friedman to appear, pro hac vice, and participate in this case as counsel for Plaintiff Fraternal Order of Police for all purposes.

Respectfully submitted,

FRATERNAL ORDER OF POLICE.

Dated: January 21, 1997

*Ellen A. Efros*

Ellen A. Efros D.C. Bar No. 250746  
Timothy N. McGarey D.C. Bar No. 420598  
VORYS, SATER, SEYMOUR AND PEASE  
1828 L. Street, NW Suite 1111  
Washington, DC 20036  
Attorneys for Plaintiff

United States District Judge

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of January, 1997, copies of the foregoing Motion for Appearance of Counsel Pro Hac Vice, Supporting Memorandum, and Proposed Order were served on the following by certified mail:

Janet Reno  
U.S. Attorney General  
U.S. Department of Justice  
Constitution Avenue & 10th Street, NW  
Washington, DC 20530

and hand delivery on the following:

Eric H. Holder, Jr.  
U.S. Attorney for the District of Columbia  
5806 Judiciary Center Bldg.  
555 4th Street, NW  
Washington, DC 20001

Ellen A. Efros  
Ellen A. Efros

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

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**THE FRATERNAL ORDER OF POLICE,**  
309 Massachusetts Avenue, N.E., Washington, 20002,  
A National Police Organization.

**Plaintiff,**

**vs.**

**UNITED STATES OF AMERICA,**

**Defendant.**

---

**Civil Action No.**

**VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiff through counsel and pursuant to 28 U.S.C. Sec. 2201 submit this verified complaint seeking declaratory and injunctive relief. This complaint alleges a case of actual controversy with adversarial parties and is brought to enjoin the Defendant, United States of America from forcing federal, State and local law enforcement agencies to implement and enforce amendments to the Gun Control Act of 1968 (18 U.S.C. Section 921 et seq.)(hereinafter the "GCA") as adopted by Congress in 1996. See The Omnibus Consolidated Appropriation Act of 1997, Pub.Law No. 104-208, Div. A, Sec. 101(f), 58 Title VI, Sec. 658 (110 Stat. 309)(Sept. 30, 1996); see also 142 Cong. Rec. H11,743 (daily ed. Sept. 28, 1996). See Attachment No.1 (The attachments referenced herein are attached to Plaintiff's Memorandum in Support.)

**JURISDICTION**

1. This Court has jurisdiction of the subject matter of this action under 28 U.S.C.S Section 1331.

**VENUE**

2. Venue in this District is proper pursuant to 28 U.S.C.S 1391(b) in that the claim arose in the District of Columbia.
3. Defendant United States is subject to the jurisdiction of this court.

## PARTIES

4. Plaintiff, Fraternal Order of Police (hereinafter "FOP") is a non-profit corporation formed under the laws of Pennsylvania with its national office in Washington D.C., and claims a membership of nearly three hundred thousand (300,000).
5. The FOP's membership is open to and includes Federal, State, County, Local and Campus law enforcement personnel that are regularly appointed and full-time law enforcement officers.
6. The FOP is an organization created to represent the interests of its membership including but not limited to, legal representation in contested matters. See Attachment No.9 (FOP Constitution preamble and excerpts).
7. In addition, the FOP fosters fraternalism among its members and seeks to encourage participation of the membership in the organization for the purpose of assisting the FOP in meeting and obtaining its goals. See Attachment No. 9.
8. Membership in the FOP by police officers is voluntary and entitles the member to legal representation by counsel in certain matters including actions such as those brought herein.
9. FOP membership criteria include employment with a recognized law enforcement agency whose employment standards meet certain FOP standards and whose employment responsibilities generally include the receipt, possession and authorization to use a firearm as defined in the GCA. See Attachment No.4 (Affidavit of FOP President Gilbert G. Gallegos).
10. FOP members include "state officials" elected or appointed by sovereign states. See Id.
11. FOP members include "state officials" who will incur additional responsibilities both fiscal and administrative as a result of the implementation of 18 U.S.C.A. 922(g)(9).

Id.

12. The majority of FOP members are law enforcement officials or employees authorized to carry government regulated and issued firearms for purposes of officer and public safety. Such firearms are generally received and possessed in the jurisdiction of employment solely.
13. The interests Plaintiff FOP seeks to protect in this proceeding are germane to the organization's purpose and its members' interests.
14. The affidavit of the FOP President attached hereto demonstrates that no claim asserted by the FOP herein nor the relief requested requires the participation of individual FOP members in this lawsuit because its members are all similarly situated with respect to the GCA amendments challenged herein.
15. Defendants, et al., are governmental actors with their principal place of operations in the District of Columbia and have issued implementing documents to the State and local law enforcement agencies from their headquarters. See Attachment Nos. 1, 2, and 3.
16. Defendant Hon. Robert E. Rubin is the Secretary of the Treasury, a governmental actor within whose jurisdiction the Act's enforcement and implementation falls. Defendant Rubin is sued in his official capacity. See 18 U.S.C. § 921 *et seq.*
17. Defendant John Magaw is the Director of ATF, the bureau charged, inter alia, with enforcing the Gun Control Act. Defendant Magaw is sued in his official capacity.

#### **BACKGROUND**

18. This is an action for declaratory and injunctive relief.
19. Congress amended the GCA to add to the categories of persons not permitted by federal law to receive or possess firearms, and to place duties on State and Local officials to assist in identifying persons so disabled under the so-called "Brady Act" provisions.
20. The 1996 GCA amendments changed 18 U.S.C. Sec's 921(a), 922(d), 922(g) and 925(a)(1). The changes created new definitions [(Section 921(a)(33)(A) and (B)],

new possession prohibitions [Section 922(d) and (g)], new obligations on Chief Law Enforcement Officers of the States [Section 922(s)(3)(B)(i), and eliminated an exception for government entities. [Section 925(a)(1)]. Essentially, the amendments created a federal crime for receipt or possession of a firearm by those previously convicted of certain **misdemeanor** offenses having as an element the use of, or the attempted use or the threatening of the use of force if committed by the spouse, domestic partner, parent, or guardian of the victim **and** placed duties on local and State officials to implement and enforce the new enactment.

21. The new crime and firearm disability created by the 1996 amendments are completely retroactive regardless of how remote in time the misdemeanor conviction is and without regard to rehabilitation of a convicted misdemeanant under State law.
22. The GCA amendment at Sec. 925 removes a more general exemption appearing in the GCA that, had it remained unchanged, would have precluded application of the new disability to military and police officials. See 18 U.S.C. Sec. 925.
23. Many FOP members are "chief law enforcement officer[s]" as defined in 18 U.S.C. §922 (s)(8) and are local or state officials. See 59 Fed. Reg. 37,532, 37,533-34 (July 22, 1994); U.S. General Accounting Office, *Gun Control: Implementation of the Brady Handgun Violence Prevention Act* (GAO/GGD-96-22) (Jan. 1996) (hereinafter GAO Report) at 14 n.8 (state police departments serve as CLEOs in some States).

#### Implementation and Enforcement Actions Taken by Defendants

24. After enactment of the amendments challenged herein, the ATF issued an "open letter" to all State and local law enforcement agencies commanding those entities to take certain enforcement and implementation measures. See Attachments 1, 2 and 3. ATF stated that the amendments required State and local law enforcement agencies to implement the provision. Defendants, et al., have moved forward aggressively to compel compliance by State. Local and federal law enforcement officials. Defendants' interpretation and position are set forth in Attachment Nos. 1, 2 and 3.

- (A) A December 6, 1996 Memorandum from the Department of Justice to "All Interested Law Enforcement Groups" from the Director of the Office of Intergovernmental Affairs regarding, "Identifying Law Enforcement Agents Who Have Misdemeanor convictions for Domestic Violence." Attachment No. 1.
  - (B) An undated "Open Letter to All State and Local Law Enforcement Officials" from John MaGaw, Director of the ATF, wherein ATF interpreted the GCA amendments to create a "firearm disability" that "does apply to all law enforcement officers" and applies to "firearms issued by government agencies" as well "personal firearms". ATF further determined that misdemeanor convictions for simple assault and battery may disable officers and any "employee" with a qualifying disability "must immediately dispose of all firearms and ammunition in their possession" or be exposed to "criminal penalties" and "seizure and forfeiture". Finally, ATF noted that the GCA amendments place new responsibilities on CLEOs. Attachment No. 2.
  - (C) An undated "Open Letter from the Director" from ATF director Magaw stating in briefer form the position taken in the "Open Letter" described in (B) above. Attachment No. 3.
  - (D) An undated "Open Letter to All Federal Firearms Licensees" from ATF director Magaw that promised implementing regulations and revised forms would be promptly provided to all licensees. Attachment No. 10.
25. Since on or about December 6, 1996, the issuance of the first Government memorandum, FOP members have been threatened with application of the GCA amendments resulting in the following: (a) in loss of their constitutional rights to possess firearms, (b) loss of ability to perform employment duties as peace officers, (c) loss of ability to completely fulfill their oaths of office to protect and serve, (d) loss of responsibility and reassignment to duties that do not require firearms and, in

some cases, (e) termination from employment.

26. Under the Gun Control Act of 1968 (GCA), ATF licenses and regulates firearms manufacturers, importers, and dealers. The regulation of firearms under the permanent provisions of the GCA is generally the exclusive responsibility of the federal government.<sup>1</sup>
27. Defendants have interpreted the amendments to place upon State and local law enforcement officials certain duties that must be executed and are reviewed against a "reasonable effort" standard appearing in those portions of the GCA that are known as the "Brady Act".
28. The responsible State or local official must determine whether an individual is ineligible to receive or possess a firearm under the amendments.
29. The responsible State or local official must make a "reasonable effort" to determine an employee/officer's compliance (as well as any other Brady Act applicant for a handgun) with the amendments.
30. If it is determined that an employee has a disqualifying misdemeanor conviction, prior to taking any negative action, the responsible State or local official must also determine if any exceptions to the disqualification obtains. The exceptions are set forth in the amendments.
31. The burden and cost of determining the application of exceptions is increased because the federal information repository is the National Crime Information Center (hereinafter "NCIC") and NCIC databases do not contain the information needed to directly address the exceptions approved in the amendments.
32. There is no simple, inexpensive or convenient manner by which a State or local official may determine that the exceptions to the penalties contained in the Act

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<sup>1</sup> . Interim background check provisions require state or local law enforcement officials to regulate handgun transfers between federal licensees and private purchasers. See §§922(s)(1)(A)(I)(1), 922(s)(3)(A) & (B); §922(s)(1)(A)(I) (III) & (IV).; § 922 (s) ( 1 ) (A) (ii). These interim provision are currently before the United States Supreme Court in Printz v. United States No. 95-1478 and Mack v. United States, No. 95-1503 (orally argued on Dec. 3, 1996).

obtain in a particular case to make eligible an officer or citizen otherwise disabled by the amendments.

33. Since on or about December 6, 1996, FOP members that are CLEOs as defined in the Brady Act, have been threatened with usurpation of their State and local statutory and ordinal obligations and administrative discretion, and have been burdened with duties and obligations imposed by the Act's amendments. This has resulted in the loss or significant impairment of their ability to perform employment duties as CLEOs, loss or significant impairment of their ability to perform as peace officers, loss or significant impairment of their ability to completely fulfill their oaths of office, compelled transfer of subordinate officers to duties that do not require firearms and in some cases, termination of subordinate officers if the officer meets the Act's disabling criteria.

#### COUNT I

#### The 1996 Amendments to the Gun Control Act Violate the Tenth Amendment

34. Plaintiff incorporates herein all preceding paragraphs as though set forth in full.
35. The GCA amendments at issue herein purport to create a firearm disability and criminal penalty for mere possession of a firearm by a convicted misdemeanor where such misdemeanor is found to be one of "domestic violence" as defined by Congress.
36. Defendants aggressively seek to implement the aforecited amendments to the Gun Control Act with respect to state and local law enforcement agencies.
37. Defendants have noticed all state and local law enforcement agencies that such agencies now have a "duty" to identify law enforcement agents with disabling convictions under the amendments. See Attachments 1,2,3 and 10.
38. Defendants command a certification list be provided by all State, County, Local and Campus law enforcement agencies with non-disabled employees names appearing thereon. Id.
39. Defendant ATF commands a "reasonable effort" be forthcoming from such

enforcement agencies through their CLEOs to determine applicability of the amendments to all subordinate employees. Id.

40. Defendants are commandeering and coercing the CLEOs and other state and local officials into implementing a federal statutory and regulatory scheme not adopted by his or her State or local legislative body, and have further burdened non-federal officials with the non-discretionary duty to gather, review, assess and disclose, information and such persons are given no choice to reject that role.
41. Defendants mandate that CLEOs implement federal criminal law policy choices without authorization from appropriate State and local entities. Such action without authorizing legislation amounts to forced legislation and an usurpation of core State and local legislative and administrative functions.
42. The usurpation of integral and core State and local functions by defendants deprives State citizens of the liberty interest in the proper allocation of political responsibility under our federal system.
43. The creation of a new criminal penalty as well as the creation of unfunded mandates to undertake enforcement against currently employed officers otherwise in good standing under existing State and local law, without any authorizing State legislation or a choice afforded to the States whether to adopt such law, constitutes impermissible amendment to existing State and local criminal codes as well as an impermissible fiscal and administrative burden requiring new federally prescribed, non-discretionary tasks for officials whose offices and duties are the creation of State law.
44. Defendant ATF's mandates that State and local officials expend funds, manpower, administrative resources and time without authorizing State or local legislation amount to usurpation of the several States' resources as well as usurpation of the legislative function regarding the hiring criteria and qualifications of law enforcement officers.
45. The enactment of the GCA amendments, and their interpretation by defendants

challenged herein violate Plaintiffs' fundamental rights secured by the 10th Amendment to the United States Constitution and has caused irremediable harm to Plaintiff's members and if not immediately abated through injunctive relief will continue to cause irreparable harm.

## **COUNT II**

### **The GCA Amendments are an Impermissible Exercise of the Congressional Power to Regulate Commerce under U.S. Const. Art. I, Sec. 8, Cl.3.**

46. Plaintiff incorporates herein all preceding paragraphs as though set forth in full.
47. Congress made inadequate findings to reasonably conclude there exists a substantial impact on interstate commerce by the singular, intrastate act of possession of a government-issued or private firearm by a previously convicted misdemeanorant.
48. Congress made inadequate findings to reasonably conclude there exists a substantial impact on interstate commerce by the accretion throughout the country of singular, intrastate acts of possession of government-issued or private firearms by previously convicted misdemeanants.
49. The movement at one time of a firearm in interstate commerce does not automatically result in a substantial impact on interstate commerce such that federal regulation of government-issued and private firearms will overall be harmed unless the intrastate activity of possession of such firearms by convicted misdemeanants is regulated and foreclosed.
50. Absent a substantial impact on interstate commerce, the enactment purporting to create a new crime in the several states exceeds Congressional authority under the commerce clause and is therefore constitutionally infirm.
51. Absent a substantial impact on interstate commerce , no justification exists for distorting and impinging on the traditional division of duties in our federal system wherein the States possess the general police power to define substantive criminal law and Congress does not.

52. Absent a substantial impact on interstate commerce , no justification exists for distorting and impinging on the traditional division of duties in our federal system wherein the States possess the general police power to define the substantive qualifications, including training criteria, of those persons charged with implementing and enforcing the criminal law in the States.
53. Absent a substantial impact on interstate commerce , no justification exists for distorting and impinging on the traditional division of duties in our federal system wherein the States possess the general police power to define the substantive duties, functional capacities, scope of office and reach of discretion of elected and hired law enforcement officers.
54. The application to and enforcement obligations placed upon Plaintiffs' members has caused irremediable harm to Plaintiff's members and if not immediately abated through injunctive relief will continue to cause irreparable harm.

**COUNT III**  
**The GCA Amendments Create Impermissibly Disparate Burdens on**  
**Different Classes of Persons and Deprives those so Burdened of Equal Protection and Due**  
**Process under the Fourteenth Amendment.**

55. Plaintiff incorporates herein all preceding paragraphs as though set forth in full.
56. The GCA amendments create a criminal penalty for "possession" of a firearm by a convicted misdemeanant without regard to whether such possessed firearm is issued by a governmental entity, is mandated as a condition of employment or contract or is otherwise required by state law or other oath of office taken by a person under State or local law .
57. The GCA amendments create a criminal penalty for "possession" of a firearm by a convicted misdemeanant without regard to the remoteness in time of the conviction, and without regard to State law presumptions regarding rehabilitation of such convicted persons and subsequent binding oaths of office or employment taken by such person.
59. The GCA amendments and defendants' interpretation of such amendments

violates rights of Plaintiffs' members as secured by the 14th Amendment to the United States Constitution in that those whose employment and fulfillment of well settled State and federal law duties compel possession of a government-issued firearm suffer an unequal impact compared with citizens that whose obligations and duties do not require that they possess firearms and there is no rational basis for such disparity.

60. The application to, and enforcement obligations placed upon Plaintiffs' members, has caused irremediable harm to Plaintiff's members and if not immediately abated through injunctive relief will continue to cause irreparable harm.

**CONCLUSION AND RELIEF REQUESTED**

WHEREFORE, Plaintiff prays that:

- (1) this Court enter an Order declaring the amendments to the GCA invalid ab initio;
- (2) this Court enter an Order commanding withdrawal of defendants' communications directing certain actions be undertaken pursuant to the GCA amendments by State and local law enforcement officials;
- (3) this Court enter an Order enjoining Defendants from issuing any Order, command or other attempt to enforce these invalid statutory provisions as against Federal, State, County, local or campus law enforcement agencies and personnel.

Plaintiff also respectfully requests the court order such further relief as it deems necessary, proper and appropriate under the circumstances.

Respectfully submitted,  
FRATERNAL ORDER OF POLICE,

1/21/97  
Date

Ellen A. Efros  
Ellen Efros, DC Bar No. 250746  
Tim McGarey, D.C. Bar No. 420598  
VORYS, SATER, SEYMOUR and PEASE  
1828 L. Street N.W., Suite 1111  
Washington, D.C. 20036-5104  
202-467-8800

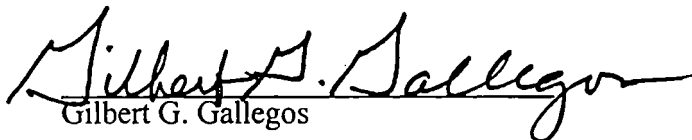
Of counsel:

  
William J. Friedman  
P.O. Drawer 2147  
Santa Fe, New Mexico 87504  
N.M. Bar No6239  
(505) 989-9800

Date: 1/21/97

### PARTY VERIFICATION

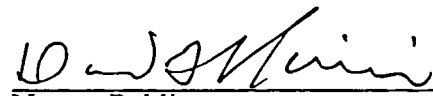
The undersigned, Gilbert G. Gallegos, President of the Fraternal Order of Police, hereby solemnly declares and affirms under the penalties of perjury that the factual representation set forth in the above Complaint for Declaratory and Injunctive Relief are true and accurate to the best of his knowledge except where such facts are set forth upon information and belief and as to those facts he believes them to be true.

  
Gilbert G. Gallegos

City of Washington }  
District of Columbia } SS:

21<sup>st</sup> Sworn to me before me and subscribed in my presence by Gilbert G. Gallegos this  
day of January 1997.

my own att  
8/31/97

  
Notary Public

Plaintiff, through counsel respectfully moves this Court, pursuant to Rule 65(a) of the Federal Rules of Civil Procedure and Local Rule 205 of this Court for a preliminary injunction (i) directing Defendant to cease and desist from taking any steps to implement or enforce the amendments to the Gun Control Act as identified and challenged in the Complaint for Declaratory and Injunctive Relief filed simultaneously herewith. In support of this Motion, Plaintiffs submit the attached affidavits of the Fraternal Order of Police President Gilbert G. Gallegos and Fraternal Order of Police Executive Director James E. Pasco, Jr. and other evidentiary attachments as well as the points and authorities cited in the attached Memorandum of Points and Authorities in Support of this Motion for Preliminary Injunction.

Respectfully submitted,  
FRATERNAL ORDER OF POLICE,

Date: 1/21/97

Ellen A. Efros  
Ellen Efros, DC Bar No. 250746  
Tim McGarey, D.C. Bar No. 420598  
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Of counsel:

William J. Friedman  
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(505) 989-9800

Date: 1/21/97

CERTIFICATE OF SERVICE

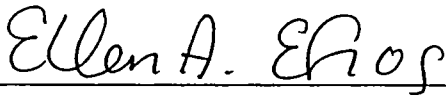
The undersigned has caused the attached Motion for Preliminary Injunction be served on the following persons and in the manner described this 22nd day of January 1997:

**By Hand Delivery:**

Mr. Eric H. Holder, Jr.  
U.S. Attorney for the District of the District of Columbia  
5806 Judiciary Center Bldg.  
555 4th Street N.W.  
Washington, D.C. 20001

**By Certified Mail:**

JANET RENO  
Attorney General of the United States  
United States Department of Justice  
Constitution Avenue and 10th Street, N.W.  
Washington, D.C. 20530



---

Ellen Efros, DC Bar No. 250746  
Tim McGarey, D.C. Bar No. 420598

**THE FRATERNAL ORDER OF POLICE,**  
309 Massachusetts Avenue, N.E., Washington, 20002,  
A National Police Organization.

**VS.**

**Defendant.**

## ORDER

WHEREAS THIS MATTER, having come before the court upon Plaintiff's Motion for Preliminary Injunction and the Plaintiff having demonstrated the following: a probability of success on the merits and that by virtue of their interest in the implementation and enforcement of the 1996 amendments to the Gun Control Act appearing at 18 U.S.C. Sec. 921et seq., that they will suffer immediate and irreparable injury if a preliminary injunction is not granted; that Defendant will not be harmed by the grant of a preliminary injunction; and that the public interest mandates the issuance of a preliminary injunction to enforce fundamental constitutional rights,

IT IS HEREBY ORDERED that Defendant is preliminarily enjoined to take steps to prevent any further implementation or enforcement of the challenged GCA amendments; and

IT IS FURTHER ORDERED that Defendant is preliminarily enjoined from issuing any further directives or Open Letters or other form of information dissemination that seeks to cause the amendments to be implemented or enforced; and

IT IS FURTHER ORDERED that this Preliminary Injunction will continue in effect until this Court has made a final determination of the merits of Plaintiff's Complaint for Declaratory and Injunctive Relief.

THIS ORDER is granted without condition that a bond be filed by Plaintiff in view of the Court's determination that no economic or other injury will result to any Defendant or the public generally in consequence of the issuance of this Order.

**IT IS SO ORDERED**

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U.S. District Judge for the District of Columbia

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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THE FRATERNAL ORDER OF POLICE,  
309 Massachusetts Avenue, N.E., Washington, 20002,  
A National Police Organization.

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

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Civil Action No.

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S  
MOTION FOR PRELIMINARY INJUNCTION**

*Introduction*

Plaintiff, through counsel and pursuant to 28 U.S.C. § 2201(a) (1988 ed., Supp. V)(Declaratory Judgment Act) filed a complaint seeking declaratory and injunctive relief. A separate application for injunctive relief has been filed under Local Rule 205. This memorandum discusses the propriety of granting the requested injunctive relief. See Doran v. Salem Inn, 422 U.S. 922, 931 (1988) (recognizing that "[o]rdinarily . . . , the practical effect of [injunctive and declaratory] relief will be virtually identical," Samuels, 401 U.S. at 73); see also 28 U.S.C. § 1331.

*Brief Statement of Facts and Procedural History*

18 U.S.C.A. Section 922 (Gun Control Act) was amended in September 1996. See Pub.L. No. 104-208; H.R.Rep. No. 104-863; 104 Cong. 2d.Sess. At 382-83 (1996) *reprinted at* 142 Cong.Rec. H11743 (daily ed. September 28, 1996). The amendments add to the categories of persons for whom it is a violation of federal law to receive or possess a firearm. The 1996 GCA amendments changed 18 U.S.C. Sec's 921(a), 922(d), 922(g) and 925(a)(1). The changes create new

definitions [(Section 921(a)(33)(A) and (B)], new possession prohibitions [Section 922(d) and (g)], new obligations on Chief Law Enforcement Officers of the States [Section 922(s)(3)(B)(I), and eliminated an exception for government entities. [Section 925(a)(1)]. Essentially, the amendments create a federal crime for receipt or possession of a firearm by those previously convicted of certain **misdemeanor** offenses having as an element the use of, or the attempted use or the threatening of the use of force if committed by the spouse, domestic partner, parent, or guardian of the victim and placed duties on state and local officials. The new crime and firearm disability appear to be completely retroactive regardless of how remote in time the misdemeanor conviction is and without regard to rehabilitation of a convicted misdemeanant under State law. The GCA amendment at Sec. 925 removes a more general exemption appearing in the GCA that, had it remained unchanged, would have precluded application of the new disability to military and police officials. In short, Fraternal Order of Police (hereinafter "FOP") members with an obligation arising from State or local enactment and contractual obligations to carry a government issued firearm may be disabled from certain duties or completely removed from service due to this enactment

The federal government, through the Bureau of Alcohol, Tobacco and Firearms, (hereinafter "ATF") has taken an immediate enforcement posture with respect to "all local and state law enforcement agencies." This posture includes mandating that the State chief law enforcement officer (hereinafter "CLEO") undertake certain measures to ensure compliance with the federal enactment.<sup>1</sup>

ATF has issued several "open letter[s]" commanding to CLEOs to undertake implementation

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<sup>1</sup>. The GCA defines a "chief law enforcement officer" as "the chief of police, the sheriff, or an equivalent officer or the designee of any such individual." 18 U.S.C. § 922 (s) (8). A CLEO may be either a local or a state official. *See* 59 Fed. Reg. 37,532, 37,533-34 (July 22, 1994) (list of CLEOs includes both state and local officials); U.S. General Accounting Office, *Gun Control: Implementation of the Brady Handgun Violence Prevention Act* (GAO/GGD-96-22) (Jan. 1996) (hereinafter GAO Report) at 14 n.8 (state police departments serve as CLEOs in some States). The CLEO "shall make a reasonable effort to ascertain within 5 business days whether receipt or possession would be in violation of the law, including research in whatever State and local recordkeeping systems are available and in a national system designated by the Attorney General." 18 U.S.C. § 922 (s) (2).

and enforcement of the amendments. See Attachment Nos. 1, 2 3 and 10.<sup>2</sup>

The affidavits of the FOP President Gilbert G. Gallegos (Attachment 4) and FOP Executive Director James O. Pasco, Jr. (Attachment 5) together with Attachment Nos. 6 (media reports of actions against FOP members); No. 7 ( internal memorandum regarding enforcement in Cincinnati, Ohio) demonstrate that there is aggressive placement of duties upon, and enforcement against, FOP members by the defendants. Due to the nature of law enforcement employment, and the federal/state balance struck in our system of government, the enactment and enforcement as set forth by defendants deprives Plaintiffs of fundamental rights secured by the United States Constitution.

### *Argument*

Plaintiff seeks an injunction primarily on the strength of New York v. United States, 505 U.S. 144 (1992) and United States v. Lopez, No. 93-1260 (1995) and request this Court declare unconstitutional the 1996 amendments to the GCA. Injunctive and declaratory relief is particularly appropriate in the instant case. See Payne v. Tennessee, 501 U.S. 808, 828 (1991)(correction [of constitutional defects] through legislative action is practically impossible.'" (quoting Burnet v. Coronado Oil & Gas Co., 285 U.S. 393, 407 (1932) (Brandeis, J., dissenting)).

### **The Injunction Application**

#### **A. Minimum Requirements**

The traditional standard for granting a preliminary injunction requires the plaintiff to show that, in the absence of its issuance, he will suffer irreparable injury, and also that he is likely to prevail on the merits.

Doran v. Salem Inn, Inc., 422 U.S. 922, (1975); accord Weinberger v. Romero-Barcelo, 456 U.S. 305 (1982):

An injunction should issue only where the intervention of a court of

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<sup>2</sup>. The Attorney General has designated the National Crime Information Center (NCIC) as the national recordkeeping system that CLEOs must consult under the GCA. See 59 Fed. Reg. 9498 (Feb. 28, 1994). In addition to these federal computer records, the Attorney General had previously noted that CLEOs could make a much more extensive search of "local, county, state, and national records-whether they are in file folders or computerized." Frank v. United States, 860 F. Supp. 1030, 1038 (D. Vt. 1994), *aff'd in part and rev'd in part*, 78 F.3d 815 (2d Cir. 1996), *petition for cert. filed*, 64 U.S.L.W. 3856 (U.S. June 13, 1996) (No. 95-2006) (quoting letter from Attorney General Reno to Rep. Charles Schumer, Nov. 9. 1993).

equity "is essential in order effectually to protect property rights against injuries otherwise irremediable." Cavanaugh v. Looney, 248 U.S. 453, 456 (1919). The Court has repeatedly held that the basis for injunctive relief in the federal courts has always been irreparable injury and the inadequacy of legal remedies. Rondeau v. Mosinee Paper Corp., 422 U.S. 49, 61 (1975); Sampson v. Murray, 415 U.S. 61, 88 (1974); Beacon Theaters, Inc. v. Westover, 359 U.S. 500, 506-507 (1959).

Weinberger v. Romero-Barcelo, 456 U.S. at 312; see also Randolph-Sheppard Vendors of America v. Weinberger, 795 F.2d 90 (D.C. Cir. 1986); City of Las Vegas v. Lujan, 891 F.2d 927, 931 (D.C.Cir. 1987)(discussing standard). Plaintiffs must demonstrate:

- (1) a substantial likelihood of success on the merits;
- (2) whether plaintiff will suffer irreparable harm if interim relief is denied;
- (3) the harm to defendants if interim relief is granted; and
- (4) whether the public interest will be served by the grant of such relief.

Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977); Virginia Petroleum Jobbers Ass'n. v. FPC, 259 F.2d 921, 925 (D.C. Cir. 1958); Housing Study Group v. Kemp, 732 F. Supp. 180, 184-85 (D.D.C. 1990). Each factor is taken up separately below.

***B. Success on the Merits***

Each claim in the Complaint is discussed briefly herein. First, Plaintiffs contend they have established a prima facie entitlement to a finding of a likelihood of success on the merits under the authority of New York v. United States, 505 U.S. 144 (1992).

***1. Application of New York v. United States to the Facts of This Case***

In the GCA amendments challenged herein Congress essentially usurped the several states legislative function **and** imposed a duty on States to serve as "implements of regulation" in direct contravention of the holding and policy contours of New York v. United States, 505 U.S. at 161. In contrast to the Brady Act cases currently before the Supreme Court, the 1996 GCA amendments violate both of the substantive constitutional proscriptions identified by the New York court.<sup>3</sup> Contrary to the holding of New York when it enacted the 1996 amendments, Congress made all the

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<sup>3</sup>. These interim provision are currently before the United States Supreme Court in Printz v. United States No. 95-1478 and Mack v. United States, No. 95-1503 (orally argued on Dec. 3, 1996).

policy decisions for the States including determining the substantive criminal law by defining the offense, naming the punishment and the collateral firearm disability, defined the exceptions and commanded State and local officials to implement, enforce and pay for its choices. See See Pub.L. No. 104-208; H.R.Rep. No. 104-863; 104 Cong. 2d.Sess. At 382-83 (1996) *reprinted at* 142 Cong.Rec. H11743 (daily ed. September 28, 1996) (amendments). Whether viewed as an impermissible trenching on the States' rights under the 10th Amendment or as an impermissible exercise under the Commerce Clause, the enactments are invalid. Id.; see also United States v. Lopez, *supra*.

In a far more egregious deviation from applicable constitutional jurisprudence than was present in New York, the offending amendments command the States to abrogate well settled state law that misdemeanor convictions do not generally lead to deprivations of fundamental rights regarding firearm possession. See Halbrook, S., Firearm Deskbook, (5/96 release) at Appendix A (cataloging State laws)(43 States have State constitutional right to bear arms). It appears that fewer than 5 states permit any kind of firearm disability for non-felonies and those that do place temporal limits on the deprivation as well as provide for other avenues of rehabilitation. Id. Alabama, Idaho and Kentucky appear to have no **felony** firearm disability as a matter of State law. Id.

Moreover, from undersigned counsel's computer search it appears that many but not all of the several states have already defined "domestic abuse" or "domestic violence" through legislative enactment. Although similar, there are many potentially significant substantive differences between the various state laws. Congress has thus supplanted the State legislatures and redefined the substantive criminal law for those states already active in this area and has compelled enactment of the federal definition of domestic violence in those states that had previously declined to enact laws relating to domestic abuse or violence.

Finally, all 50 of the several states have some kind of statutory criteria and qualifications for the hiring and training of law enforcement officers that must be substantively amended under the 1996 GCA amendments. The invasion into the legislative arena of the states in two areas typically reserved to the states in our federal system demonstrate the extent to which Congress has

overstepped its role and usurped State legislative function.<sup>4</sup>

In New York v. United States, the Court measured Congress' power to use the States as "implements of regulation" by the political accountability of both state and federal officials. 505 U.S. at 167-69, 182-83. Two means of providing for state implementation of federal regulations are valid: conditional grants and "the choice of regulating [private] activity according to federal standards or having state law preempted by federal regulation." 505 U.S. at 167. Under each of "these two methods \* \* \* of encouraging a State to conform to federal policy choices, the residents of the State retain the ultimate decision as to whether or not the State will comply." Id. at 168. The State "may elect to decline a federal grant," or it "may choose to have the Federal Government rather than the State bear the expense of a federally mandate regulatory program." Id. When "Congress encourages state regulation rather than compelling it, \* \* \* state officials remain accountable to the people." 505 U.S. at 185. Using the States as "implements of regulation" is not valid. Congress cannot "cross[] the line distinguishing encouragement from coercion," 505 U.S. at 175, and "compel the States to enact or administer a federal regulatory program." 505 U.S. at 188. "[W]here the Federal Government compels States to regulate, the accountability of both state and federal officials is diminished." 505 U.S. at 68-69, 182-83.

In New York, the Court held that Congress cannot require a State either to take title to low level radioactive waste generated by private parties within its borders, or to regulate the disposal of such waste "according to the instructions of Congress." Id. at 175. Both of these alternatives are unconstitutional, and "[a] choice between two unconstitutionally coercive regulatory techniques is no choice at all." 505 U.S. at 176. With regard to the first alternative, Congress simply has no power "to transfer radioactive waste from generators to state governments." 505 U.S. at 175. Moreover, in language that speaks directly to the instant case, this Court found that "the second alternative held out to state governments-regulating pursuant to Congress' direction would, standing alone, present a simple command to implement legislation enacted by Congress [and] \* \* \* the

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<sup>4</sup>. In addition to Brady Act burdens on State and local entities, the 1996 amendments add another element to the background check as well as severely impinges on a State's right to determine the qualifications and roles of its law enforcement officers.

Constitution does not empower Congress to subject state governments to this type of instruction." 505 U.S. at 175-76.

In the instant case, in addition to disrupting the delicate federal state balance, Congress, did not provide federal personnel or federal funds to enforce these provisions. As with the Brady Act handgun transfer laws currently before the United States Supreme court, Congress imposed all the administrative and financial costs of enforcement on state and local officials. See fn 2 herein.

If the government takes the position in this case that it has taken in the Brady Act cases, a state or local "chief law enforcement officer" (CLEO) "shall" enforce the new domestic abuse amendments both generally against the public and internally against all employees of the law enforcement agencies. See 18 U.S.C. Section 922(s)(3)(B)(I). Brady duties are enforceable by an injunction. See GAO Report at 7, *supra*. CLEOs must allocate their limited administrative and financial resources to enforce federal law even though their constituents may prefer their government to "devote its attention and resources to problems other than those deemed important by Congress." New York v. United States, 505 U.S. at 168.

By leaving no choice to the States but to accept a new crime that either the State has not chosen to enact through its legislature or to accept a Congressional redefining of an existing state law, Congress has severely diminished "the accountability of both state and federal officials." 505 U.S. at 168-69, 182-83. The 1996 amendments impermissibly blur the political accountability of both Congress and state officials because responsibility for implementing and enforcing the substantive measure is divorced from the duty to provide the money and personnel to enforce these policies and Congress has commanded the States' to change their statutes with regard to the hiring, qualifications etc. of its law enforcement officers. Congress did not take into account the costs of enforcement or the cost of changing substantive hiring criteria. State and local governments are required to provide the personnel and funds necessary to enforce the amendments at the expense of implementing state policies and fulfilling the demands of their citizens. The 1996 GCA amendments blur political accountability in a way that threatens democratic self-governance because CLEOs will be held accountable by their constituents for decreased enforcement of state law or increased enforcement of federal law even though they did not have any choice about allocating resources to

enforce the federal mandate or any choice in the contours of the substance of the mandate.<sup>5</sup>

While Congress escapes political responsibility for the costs of the 1996 amendments and the alteration of substantive state law, state and local officials are held accountable for decisions made by the federal Government. State and local legislatures, as well as CLEOS, are thus compelled to allocate their limited administrative and financial resources to implement federal policies even though their constituents may "prefer their government to devote its attention and resources to problems other than those deemed important by Congress." New York v. United States, 505 U.S. at 168. CLEOs must allocate administrative and financial resources to perform the regulatory duties imposed by the Brady Act. If there is no increase in their budgets, these state and local officials will have to decrease enforcement of state and local laws. In these circumstances, state or local legislative bodies will then be forced either (1) to increase the budgets of CLEOs by raising taxes or reallocating resources from other areas of the budget or (2) to acquiesce in the reduction of state and local law enforcement by CLEOs. See Deborah L. Merritt, *Three Faces of Federalism: Finding A Formula For The Future*, 47 Vand. L. Rev. 1563, 1580 n. 65 (1994) ("Although the [Brady] Act specifically exempts local officers from civil liability for erroneous determinations, it does not shield them from popular criticism or electoral retaliation for those decisions.") (citation omitted). If the 1996 GCA amendments offered the States any choices "state governments [would] remain responsive to the local electorate's preferences; state officials [would] remain accountable to the people." 505 U.S. at 168.

Whatever the outer limits of that sovereignty may be, one thing is clear: The Federal Government may not compel the States to enact or administer a federal regulatory program.

505 U.S. at . Accordingly, New York stands for the proposition that interference with state

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<sup>5</sup>. Instead of imposing duties on the States, the Framers anticipated voluntary state cooperation in the enforcement of federal law. See *United States v. Jones*, 109 U.S. 513, 519-20 (1883). For example, from 1789 forward Congress has authorized state officials to arrest federal offenders. With the special exception of Congress' power to enforce constitutional duties of state officers, the United States Supreme Court has consistently held that Congress cannot "compel the States to enact or administer a federal regulatory program." *New York v. United States*, 505 U.S. at 188. Pressing social problems do not justify departures from fundamental constitutional principles. Congress could reasonably have relied on voluntary enforcement or induced state and local officials to cooperate in enforcement of the amendments through means that respect constitutional principles of political accountability.

legislatures is impermissible and forcing the States to pay for enactments that have usurped their core legislative function is doubly so. But see Koog v. United States, 79 F.3d at 460-61 (discussing problems of political accountability raised by the Brady Act). The 1996 GCA amendments interfere with State functions and threatens the kind of future that stalls state government in its tracks by imposing all-consuming federal duties on the State's employees. 505 U.S. at 178 ("Where a federal interest is sufficiently strong to cause Congress to legislate, it must do so directly; it may not conscript state governments as its agents." The 1996 GCA amendments are invalid enactments under New York v. United States.

**2. *The 1996 GCA Amendments are Unconstitutional under United States v. Lopez***

In United States v. Lopez, 115 S.Ct. 1624 (1995) the Supreme Court held the "Gun Free School Zone Act" 18 U.S.C. 922(q)(1)(A)(Supp. 1993) exceeded Congress' power to regulate interstate commerce under the Commerce Clause. 115 S.Ct. at 1626. The court "identified three broad categories of activity that Congress may regulate under its Commerce power." 115 S.Ct. at 1629.

First Congress may regulate the "use of the channels of interstate commerce". The court cited inter alia Heart of Atlanta Motel Inc., v. United States, 379 U.S. 241 (1964) for this proposition only after noting that the court must nonetheless find "a rational basis existed for concluding that regulated activity *sufficiently affected interstate commerce*. Id. (emphasis added by Plaintiff). Second, Congress may regulate "the instrumentalities of interstate commerce, or persons or things in interstate commerce." Id. The Court cited cases generally dealing with a "class of activities" like loan-sharking in Perez v. United States, 402 U.S. 146 (1971) because Congress may consider the "total incidence" of the regulated economic activity on interstate commerce. 402 U.S. at 154. Third, Congress may regulate those activities that are not themselves commercial or commerce but bear a "substantial relation to interstate commerce." 115 S.Ct. at 1630.

As can readily be seen, the first two categories have nothing to do with the 1996 GCA amendments challenged in the instant case. But see U.S. v. Bates, 77 F.3d. 1101 (8th Cir. 1996)(declining to apply Lopez to a felon in possession case). As the Chief Justice noted in Lopez so it is in the instant case:

...Section 922(q) is not a regulation of the use of channels of interstate commerce, *nor is it an attempt to prohibit the interstate transportation of a commodity through the channels of interstate commerce.* (Emphasis added by Plaintiffs)

115 S.Ct. at 1630. Accordingly, the court turned to the final category:

Within this final category, admittedly, our case law has not been clear whether an activity must "affect" or "substantially affect" interstate commerce in order to be within Congress' power to regulate it under the Commerce Clause. Compare Preseault v. ICC, 494 U.S. 1, 17 (1990), with Wirtz, *supra*, at 196, n. 27 (the Court has never declared that "Congress may use a relatively trivial impact on commerce as an excuse for broad general regulation of state or private activities"). *We conclude, consistent with the great weight of our case law, that the proper test requires an analysis of whether the regulated activity "substantially affects" interstate commerce.* (Emphasis added by Plaintiff)

Id.

With this simple statement the Supreme Court established that "interstate commerce" would no longer be invoked talismanically to justify extensions of Congressional authority into realms traditionally left to the States.

"[S]imply because Congress may conclude that a particular activity substantially affects interstate commerce does not necessarily make it so." Hodel, *supra* at 311 (Rehnquist, J., concurring in judgment).

115 S.Ct. at 1658; *but see U.S. v. Imngren*, 98 F.3d 811 (4th Cir. 1996) (distinguishing Lopez and upholding 18 U.S.C.A. 922(g); Congress' use of "shipped or transported" sufficient to create federal jurisdiction).<sup>6</sup>

Finally the Lopez court went further and distinguished statutes that "generally" relate to commerce from criminal statutes for purposes of applying the "substantial impact" test. The doctrine that permits intrastate activity to be aggregated to support a finding of "substantial impact" as in

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<sup>6</sup> The Fourth Circuit in Imngren appears to have misperceived the Supreme Court's analysis in Lopez. Lopez stands for the principle that while Congress may declare a particular activity affects interstate commerce, unless the court finds a "substantial" interstate commerce impact, the impact is legally insignificant and Congress cannot thereunder invoke the commerce clause. Lopez further concludes that the addition of an interstate commerce jurisdictional predicate to the statutory language defining the offense obligates the factfinder to make a determination of whether the regulated conduct in that particular case has a "substantial" impact on interstate commerce. *See e.g. Hodel v. Virginia Surface Mining & Reclamation Assn., Inc.*, 452 U.S. 264, 276-280 (1981); *Perez v. United States*, 402 U.S. 146, 155-156 (1971); *Katzenbach v. McClung*, 379 U.S. 294, 299-301 (1964); *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 252-253 (1964).

Wickard v. Filburn, 317 U.S. 111, 121 (1942) (describing development of Commerce Clause jurisprudence), applies most forcefully to situations where the conduct regulated by statute is inherently commercial.

[t]he Court has said only that where a general regulatory statute bears *a substantial relation to commerce*, the *de minimis* character of individual instances arising under that statute is of no consequence.

115 S.Ct. at (emphasis added by Plaintiffs).

These examples are by no means exhaustive, but the pattern is clear. Where *economic activity substantially affects interstate commerce*, legislation *regulating that activity* will be sustained. (emphasis added by Plaintiffs)

115 S.Ct. At Lopez at 1663. After the Lopez clarifications, the intrastate accretion cases are generally limited to “economic” activities and not “criminal” activities. Accordingly, it is the economic impact of possession of firearms and not the consequences or horror of domestic violence that must aggregate to a “substantial impact”. No such finding exists or can be made in the instant case. It is thus inescapably evident that the court now requires, whether there is “interstate commerce” language in the statute or not, that a finding upon a rational basis be made that a “substantial impact” on interstate commerce exists because of the *economic conduct* regulated by the enactment.

It can be expected that the Government will seize, as several appellate courts have since Lopez, on the Supreme Court’s reference to a lack of an express jurisdictional element in the Gun-Free School Zone Act as partially dispositive. 115 S.Ct. at 1630-31; *see e.g. United States v. Mosby*, 60 F.3d 454, 455, (8thCir. 1995), *cert. Denied* \_\_ U.S. \_\_, 116 S.Ct. 938 (1996); U.S. v. Bradford, 78 F.3d 1216 (7thCir. 1996)(holding Lopez casts no doubt on application of felon in possession law, 18 U.S.C. 922(g)(1); U.S. v. Lee, 72 F.3d 55, 58 (7thCir. 1995)(same); U.S. v. Sorrentino, 72 F.3d 294, 296 (2ndCir. 1995)(same). Such reliance however, would be misplaced under the overall rationale of the Lopez case and upon a non-felon fact pattern as in the instant case. While the court certainly noted that appropriate jurisdictional language would “ensure, through case by case inquiry, that the firearm possession in question affects interstate commerce,” 115 S.Ct. at 1630-31, this would not save an otherwise defective enactment. The case by case inquiry appears to be nothing

more than a restatement of the court's independent duty to ascertain the constitutionality of an enactment through evaluation of the impact of the regulated conduct on interstate commerce. The use of interstate commerce language in the statute merely identifies the power Congress seeks to invoke as a basis for its enactment authority and to give contour to the jurisdictional predicates that it intends must be found. The authority of Congress to enact the measure is a constitutional question for the court; it is not simply a rehashing of whether Congress set forth a jurisdictional element of a statute. Lopez.

Applying this rationale to the instant case demonstrates that to sustain the 1996 GCA amendments the government must show a rational basis for finding a substantial impact on interstate commerce exists, arising from a singular, intrastate possession of a firearm by a previously convicted domestic violence misdemeanant.<sup>7</sup> The economic conduct regulated by the 1996 GCA amendments is "possession" of a firearm by those previously convicted of misdemeanor domestic abuse or violence. Undersigned counsel was unable to locate Congressional findings and has preliminarily determined almost no legislative history exists other than the remarks of Senator Lautenberg on the Senate floor. See Pub.L. No. 104-208; H.R.Rep. No. 104-863; 104 Cong. 2d.Sess. at 382-83 (1996) *reprinted at* 142 Cong.Rec. H11743 (daily ed. September 28, 1996); Attachment No. 8 (Lautenberg comments).

There appears to be nothing in the record of this enactment that finds possession of firearms by this class of person has any larger impact on interstate commerce than mere possession by any other individual or class of convicted misdemeanant. One thing is clear: the amendments are not affirmable upon a showing of the economic costs or impact of domestic violence on interstate commerce. Section 922(g) does not regulate domestic violence; it regulates possession of a firearm by a previously convicted misdemeanant. No federal case located by undersigned counsel finds

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<sup>7</sup>. Plaintiff recognize that intrastate activity may be aggregated to find a substantial impact on interstate commerce. See e.g. Wickard v. Filburn, 317 U.S. 111, 121 (1942) (describing development of Commerce Clause jurisprudence). However, as discussed above, where the statute sought to be upheld is not a "commercial" statute generally, the significance of aggregated de minimis violations of the statute is lessened. This means that the 922(g) proscription, which does not purport to primarily regulate commercial behavior, is an unlikely candidate for affirmance if the only basis for finding a substantial impact on interstate commerce is singular, intrastate violations aggregated.

convicted misdemeanants, standing alone, to have a substantial impact on interstate commerce and the rationales advanced in the felon in possession cases are simply inapposite because no finding or proof of substantial interstate trafficking in firearms by previously convicted misdemeanants exists as was discussed in the felon cases. See Scarborough v. United States, 431 U.S. 563 (1977) Similarly,

The possession of a gun in a local school zone is in no sense an economic activity that might, through repetition elsewhere, substantially affect any sort of interstate commerce.

at 1634.

Contrary to the enactment rejected in Lopez, under the possession ban appearing in 922(g) the firearm is merely possessed and the proximity to a former or potential victim of domestic abuse is not relevant. In this sense 922(g) is a pure ban on possession and does not regulate any substantial impact on interstate commerce. If proximity of firearms to school children is insufficient to save the ban on possession near children, surely a ban on mere possession that does not include a proximity component to any at risk person must fail as well. Lopez held that possession of a firearm in a local school zone does not substantially affect interstate commerce and the basis asserted to create federal jurisdiction over mere possession of a firearm by a convicted misdemeanant is even more far-fetched than that offered, and rejected, in Lopez.<sup>8</sup> Accord United States v. Bass, 404 U.S. 336 (1971)(conviction under 18 U.S.C. § 1202(a) for a felon to "receiv[e], posses[s], or transpor[t] in commerce or affecting commerce . . . any firearm" reversed; Government failed "to show the requisite nexus with interstate commerce." at 347.)

Congress has enacted many statutes (more than 100 sections of the United States Code), including criminal statutes (at least 25 sections),

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<sup>8</sup>. Justice Breyer's dissent turns the car around and heads straight back to the rejected line of cases.

[A] court must consider, not the effect of an individual act (a single instance of gun possession), but rather the cumulative effect of all similar instances (i.e., the effect of all guns possessed in or near schools). See, e.g., Wickard, supra, at 127-128. As this Court put the matter almost 50 years ago: [I]t is enough that the individual activity when multiplied into a general practice . . . contains a threat to the interstate economy that requires preventative regulation. Mandeville Island Farms, Inc. v. American Crystal Sugar Co., 334 U.S. 219, 236 (1948) (citations omitted).

At 1658 (Breyer dissenting)

that use the words "affecting commerce" to define their scope, see, e.g., 18 U.S.C. § 844(l) (destruction of buildings used in activity affecting interstate commerce), and other statutes that contain no jurisdictional language at all, see, e.g., 18 U.S.C. § 922(o)(1) (possession of machine guns). Do these, or similar, statutes regulate noncommercial activities? If so, would that alter the meaning of "affecting commerce" in a jurisdictional element? Cf. United States v. Staszczuk, 517 F.2d 53, 57-58 (7th Cir. 1975) (en banc) (Stevens, J.) (evaluation of Congress' intent "requires more than a consideration of the consequences of the particular transaction"). More importantly, in the absence of a jurisdictional element, are the courts nevertheless to take Wickard, 317 U.S. at 127-128, (and later similar cases) as inapplicable, and to judge the effect of a single noncommercial activity on interstate commerce without considering similar instances of the forbidden conduct? However these questions are eventually resolved, the legal uncertainty now created will restrict Congress' ability to enact criminal laws aimed at criminal behavior that, considered problem by problem rather than instance by instance, seriously threatens the economic, as well as social, wellbeing of Americans.

at 1664 (Breyer, J. Dissenting). Justice Breyer gets the question right but completely misses its point: the proscribed conduct must have some substantial impact on interstate commerce and where no limitation on Congress' power is discernable from the enactment in question, affirmation requires far too many inferences.

Under the theories that Government presents in support of Section 922(q), it is difficult to perceive any limitation on federal power, even in areas such as criminal law enforcement or education where the States historically have been sovereign. Thus, if we were to accept the governments' arguments, we are hard-pressed to posit any activity by an individual that Congress is without power to regulate. \* \* \*

Admittedly, a determination whether an activity is commercial or noncommercial may in some cases result in legal uncertainty. \* \* \* The Constitution mandates this uncertainty by withholding from Congress a plenary police power that would authorize enactment of every type of legislation. See U.S. Const., Art. I, Sec.8.

115 S.C.. at 1632-33 (quoted so as to summarize). The holding and rationale of Lopez demonstrate that possession by a previously convicted misdemeanant is an inadequate basis for federal jurisdiction and is constitutionally infirm as lacking a "substantial impact" on interstate commerce.

### **3. *The Amendments Violate Due Process and Equal Protection***

Plaintiff contends an imminent deprivation of employment, demotion or other loss of professional status occasioned by the passage of a Congressional enactment that disproportionately impacts one class of person is a violation of the equal protection clause of the Fourteenth

Amendment as well as a deprivation of substantive and procedural due process. See U.S.C. Const. Amend. XIV.

### **The Equal Protection Claim**

To decide whether a law violates the Equal Protection Clause, we look, in essence, to three things: the character of the classification in question; the individual interest affected by the classification; and the governmental interests asserted in support of the classification.

Dunn v. Blumenstein, 405 U.S. 330, 336 (1972). The type of review, or level of scrutiny is determined by the nature of the interest impinged upon. Id. Plaintiff does not contend that law enforcement personnel are a suspect class and therefore concedes the strictest standard of review is not applicable on that basis. See Miller v. Christopher, 96 F.3d 1467 (D.C.Cir. 1996). However it is equally well settled that courts may uphold enactments that impinge on a “fundamental right” *only* where it is demonstrated that a “compelling governmental interest” is met. See Sklar v. Bryne, 727 F.2d 633 (1984); accord City of Cleburne Texas v. Cleburne Living Center, 473 U.S. 432 (1985).

In the instant case the Second Amendment provides, “...the right of the people to keep and bear arms shall not be infringed.” U.S. Const. Amend. 2. While the right is clearly fundamental under the “textual basis” doctrine, federal jurisprudence on this issue is somewhat undeveloped. See San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 33 (1973)(fundamental right is one that is explicitly guaranteed by Constitution). While federal jurisprudence is not well developed regarding the Second Amendment, see van Alstyne, The Second Amendment and the Personal Right to Bear Arms, 43 Duke L.J. 1236, 1238-41, (1994), the Second amendment is operative against Congressional intrusion. See Pencak v. Concealed Weapon Licensing Board, 872 F.Supp. 410 (E.D. Mich. 1994); Quilici v. Village of Morton Grove, 695 F.2d 261, 269 (7thCir. 1982); see also United States v. Verdugo-Urquidez, 494 U.S. 259 (1990)(holding fourth amendment generally inapplicable outside U.S., noting right of people to “keep and bear arms.”). The Second amendment is generally inoperative against state based intrusions. U.S. v. Cruikshank, 92 U.S. 542, 551-53.

In the instant case the fundamental rights of some of Plaintiff’s members are impinged upon by the 1996 GCA amendments. The amendments create a clear deprivation of a fundamental right

to bear arms. Perhaps more significantly, the loss of the right to bear a firearm essentially deprives law enforcement personnel of their property interest in their employment where receipt and possession of a government issued firearm is usually mandatory. See Attachment No. 4. Moreover, the reliance interest arising from the extensive training and certification processes that most law enforcement personnel go through is strong and deserves to be balanced against the governments' new enactment. See City of New Orleans v. Dukes, 427 U.S. 297, 305 (1976)(upholding grandfather clause protecting established businesses). Because 43 States and the United States have some form of textual, Constitutional right to bear arms, the compelling interest standard should be utilized. Under the compelling interest standard the enactments fail because they are insufficiently tailored to a particular government end. Since there is nothing in the legislative record to demonstrate the need for such a drastic limitation on a fundamental right it is readily apparent that other, less drastic means of satisfying the state interest were not considered. Finally, even where a legitimate end is sought, "arbitrary and irrational classifications" are impermissible. See e.g. Heatherton v. Sears, Roebuck & Co., 653 F.2d 1152, 1157-59 (3rd.Cir. 1981).

The classification at issue here is a retroactive firearm disability applicable to a person previously convicted of a single misdemeanor involving "domestic" violence. One conviction is sufficient to create the disability. Out of the pantheon of violent misdemeanors, Congress chose one and only one and it is a crime that is not even defined in many states. The preferential treatment is for those members of society that have never had a disqualifying domestic violence misdemeanor conviction of this singular type only. The enactment permits those never convicted of domestic violence (despite other violent convictions) to possess firearms and those that have been convicted of such an offense solely may not.

Curiously, the enactment does not disable the vast class of violent misdemeanants previously convicted of assault and battery or other non-felonious crimes of violence. See 1996 amendments (disables domestic violence offenders only). The enactment does not consider the number or type of other violent misdemeanors. No legislative history exists to explain why Congress chose to disable the narrow class of persons that acted violently towards a person they knew previously, and chose to not disable the vast class of violent offenders that lashed out at unknown persons. It is

somewhat obscure from the Congressional record why a single conviction for misdemeanor violence against a family member is weighed so much more heavily than what could be ten convictions for violence towards strangers. In some ways the enactment deprives all persons not possessed of a sufficiently “domestic” relationship of the enactment’s protections. While perhaps not a compelling constitutional argument standing alone, it illuminates the ill-considered haste with which Congress adopted the challenged amendments. Counsel is not unmindful of the horror of domestic violence, however Congress gave no explicit or articulate substantiation for its enactment and this court should not lightly attribute a meaningful, rational purpose when it is not disclosed on the record by Congress. See Sklar 727 F.2d. at 641 (citing Delaware River Basin Comm’n v. Bucks County Water & Sewer Authority, 641 F.2d 1087, 1094-97 (3rdCir. 1981).

This deficit is particularly significant when the disproportionate impact on law enforcement and those professionally required to carry firearms is examined. Many law enforcement personnel hold statutorily created positions with mandated duties. See Attachment No. 4. If elected to this office, the enactment deprives not only the office holder of employment and electoral entitlement under State law, but deprives the electorate of their chosen person for the role. When examined against the backdrop of extensive training according to criteria often set by the political process through a state legislature, the reliance interest looms even larger. While none of these points standing alone may be dispositive, combined they make a compelling case for finding the 1996 GCA amendments an impermissible enactment under an equal protection analysis. See Sklar 727 F.2d at 641. (Noting reliance interest is legitimate ground upon which to rest a finding of rational relation between ends and means).

[T]he purpose of protecting those who relied upon prior laws--and only to the extent they relied on prior law--is a matter of simple fairness. Governments enact laws which invite citizens to invest their money and time and to arrange their affairs in reliance upon those laws. Laws are not immutable, but we can see no reason to prohibit governments from protecting the interests of those who rely upon prior law.

Sklar 727 F.2d at 642. Under the above rationale, those whose employment depends on receipt and possession of a firearm because they undertook professional training to be so entitled, where such training and certification of skill level are mandated by state or local legislative or executive

enactment, and all employment benefits coming to such person depend on maintaining a capacity to possess a firearm, the tension arising under the GCA amendments should be resolved in favor of the Plaintiff. At a minimum this court should find the law enforcement reliance interest sufficiently strong to foreclose *retroactive* application against such persons and declare it solely *prospective* in application only. See Peterson v. Linder, 765 F.2d 698, 706 (7th Cir. 1985) (rejecting piecemeal approach to problem by legislature where no showing of intent to address whole problem over time exists); see also Landgraf v. USI Film Products, 511 U.S. \_\_\_, 114 S.Ct. 1483 (1994) (discussing retroactivity, primarily in civil context).

### **Substantive and Procedural Due Process Claim**

Plaintiff contends that the 1996 GCA amendments violate both substantive and procedural due process. See Hoffman v. City of Warwick, 909 F.2d 608 (1st Cir. 1990). The right to bear arms and to not arbitrarily lose employment or status therein secured by existing state and federal law cannot be removed arbitrarily. The Supreme Court in Flemming v. Nestor, 363 U.S. 603, 610-611 (1960) noted that, given certain binding statutory rights, "[t]he interest of a covered employee under the Act is of sufficient substance to fall within the protection from arbitrary government action afforded by the Due Process Clause." See also U.S.C.A. Const. Amend. 5 & 14. Relying on Hoffman, the Warwick court said:

Since plaintiffs do not argue that they relied on Section 30-21-3 in accepting employment with the Cities or in entering the service, there is no particular unfairness to them in the retroactive aspect of the Repeal Statute. (Citation omitted).

Warwick, 909 F.2d at 618. In the instant case it is unavoidably clear that law enforcement personnel rely on the right to bear arms when entering law enforcement training and ultimately upon entering into service to the public. The 1996 GCA amendments violate the substantive due process rights of Plaintiff's members.

Any member of the FOP that holds a law enforcement position requiring receipt and possession of a weapon to execute the job, who will be disabled by the 1996 GCA amendments, has been deprived of an employment interest without procedural due process. Although Plaintiff acknowledges the well settled law that "the legislative determination provides all the process that

is due,” that rule is inoperative where other substantive constitutional defects exist such as those outlined above. See Warwick, 909 F.2d at 620-21 (discussing cases).

#### **Plaintiffs Have Demonstrated a Likelihood of Success on the Merits**

The foregoing sections demonstrate that Plaintiff has a substantial likelihood of success on the merits of its challenge to the constitutionality of the 1996 GCA amendments.

#### **Irreparable Harm<sup>9</sup>**

In the body of the above introductory discussion of the merits of the challenges raised herein, Plaintiff describes several immediate and irreparable impacts on Plaintiffs’ members . In particular the loss of employment, loss of professional status and professional role as well as the attendant loss of benefits for the law enforcement officer are severe. Due to the exigencies of law enforcement needs, most will no longer have jobs at the conclusion of lengthy constitutional litigation. Moreover, the consequences of disruption to child-support payments, debt service, and mortgage payments, are all immediate and while is perhaps possible to imagine monetary compensation satisfying these complaints, timeliness should not be cavalierly overlooked. Irreparable injury generally means that which money cannot set aright. See generally 11 C. Wright & Miller, Federal Practice and Procedure Sec. 2948 at 431-41 (1973). Four irreparable injuries arise in this case.

First, non-disabled chief law enforcement officers must undertake to implement and enforce the federal mandate. A federal command to a state official to implement and enforce a federal regulatory program for which no funding or federal assistance is forthcoming is in direct violation of the proscription appearing in New York v. United States, 505 U.S. 144 (1992). The New York court rejected federal efforts to force a States to implement federal regulatory programs. Expenditure of state appropriated funds, and commandeering of state officials to meet non-discretionary federal regulatory and administrative mandates creates immediate and irretrievable fiscal loss to the implementing State.

Second, the loss of citizen liberty interest through the loss of political accountability is

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<sup>9</sup>. The factual basis for these assertions are primarily based on the Attachments 4 and 5 hereto.

irretrievable. Where the federal government coerces the states to either implement a federal program or enact a federal program, through state law, it places all elected and appointed officials in the position of having no proper response to their constituents. If state and local residents choose a different emphasis for their elected and appointed officers, and appropriate and legislate to vivify that emphasis, and it is frustrated by Congress, no remedy exists.

Third, the harm to the public that these officers are sworn to protect and serve is so extreme that it can be described but not measured. See Railroad Comm'n v. Pullman Co., 312 U.S. 496, 500 (1941)(public consequences are of particular significance in awarding injunctive relief). While it is unknown exactly to what extent the disabilities present in the enactments will harm the protection of the public, it is obvious that loss of any protection is unjustifiable. Every State and most local law enforcement agency have extensive training programs that must be completed prior to an applicant receiving a "certification" and a government issued firearm. The loss of front-line officers without adequately trained replacement officers puts the unsuspecting public in a dire situation. The loss of one life through the arbitrary and unconstitutional removal of highly trained officers and reduction in workforce levels is one life too many. The role in public safety of the nearly three hundred thousand members of the FOP is well known while the impact of the application of the enactments to public safety is unknown.

Fourth and finally, undersigned counsel could not locate a State law for simple domestic violence that contains a penalty that is typically considered a felony where the substance of the offense is of the same sort as that creating the disability under the federal enactments. While such law may exist, or under certain facts be applicable, it is imminently clear that the 1996 GCA amendments drastically change well settled rights throughout the land. Where fewer than five states have authorized this kind of elimination of fundamental rights for misdemeanor activity it is imprudent to rush to apply a new federal act to the contrary. To force the states to enact new laws, expend resources to implement federal programs and force from office state and local officials with otherwise exemplary record creates an irreparable harm to the overall functioning of a State.

Enforcement of the 1996 amendments amounts to an immediate amendment to every state criminal code to add an additional penalty to prior misdemeanor convictions, and to amend its law

enforcement hiring criteria as set forth by statute. Such interference with core State functions such as law enforcement resource allocation and the exercise of the police power cannot stand.

### **Harm to Defendants and the Public Interest**

It is not anticipated that the 1996 amendments, without which this country and the several states have existed for over 200 years, will cause harm to the U.S. government in any immediate sense. The confusion as to the relative roles of the States and the federal government, even among the federal agencies with enforcement authority, is sufficient to demonstrate hasty and uncounselled enforcement is unwarranted. Awaiting implementing regulations is a minimal intrusion into the federal prerogative and should be undertaken at a minimum.

The public interest in such a situation is complex. While no one can dispute that one incident of domestic violence is one too many, the disruption to the efficient functioning of law enforcement agencies around the country from immediate enforcement of the GCA amendments could lead to far greater deficits in the protection of the public. As noted above, the impact of the new enactments on public safety overall is completely unknown and speculative; the impact from diminished and hamstrung law enforcement agencies has been demonstrated many times over. Preparedness, with the ability to rapidly respond with highly trained officers remains paramount to the public safety. Finally, as noted in the first section of this memorandum, the immediate loss of the liberty interest protected by a proper division of federal and state political accountability is detrimental to the public in ways that this country has fortunately never had to experience. We should not rush headlong down that road without an abiding certainty that the public interest is deeply benefitted in the long term. Accordingly, the public interest is well served by a period of time during which these issues can be fully briefed and this court may make an informed decision upon the merits.

### **Conclusion**

The challenged amendments to the GCA are sufficiently suspect under our constitutional jurisprudence to find a likelihood of success on the merits by the Plaintiffs. The irreparable harm to the States, the public, and the Plaintiffs all militate against rapid implementation and justify the narrow request for injunctive relief. Injunctive relief is uniquely proper under the facts of this case because the government has not issued any implementing regulations and the other provisions of the

the Brady Act, to which the 1996 amendments add, are currently before the United States Supreme Court. The public interest is served if minimal disruption to law enforcement agencies, state legislatures and well settled expectations occurs prior to a full review of all parties' rights under these troubling new enactments that so dramatically change our legal landscape.

Respectfully submitted,  
FRATERNAL ORDER OF POLICE,

1/21/97  
Date

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Date: 1/21/97

CERTIFICATE OF SERVICE

The undersigned has caused the attached Memorandum of Points and Authorities in Support of Plaintiff's Motion for Preliminary Injunction be served on the following persons and in the manner described this 22nd day of January 1997:

**By Hand Delivery:**

Mr. Eric H. Holder, Jr.  
U.S. Attorney for the District of the District of Columbia  
5806 Judiciary Center Bldg.  
555 4th Street N.W.  
Washington, D.C. 20001

**By Certified Mail:**

JANET RENO  
Attorney General of the United States  
United States Department of Justice  
Constitution Avenue and 10th Street, N.W.  
Washington, D.C. 20530

*Ellen A. Efros*

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Ellen Efros, DC Bar No. 250746  
Tim McGarey, D.C. Bar No. 420598

12/06/96 08:48 202 514 2504

DOJ OPL &amp; IA

\*\*\* FOR FASCO

2004/019

QUALIFICATION INQUIRY

Within ten (10) working days of receipt, you are required to complete this Qualification Inquiry and provide it to [your immediate supervisor]. In completing this form, you are advised:

- (a) The purpose is to obtain information which will assist in the determination of whether personnel reassignment and/or administrative action are warranted.
- (b) You have a duty to complete this form. Agency disciplinary action, including dismissal, may be undertaken if you refuse to answer or if you fail to reply fully and truthfully.
- (c) Neither your answers nor any information or evidence gained by reason of your answers can be used against you in any criminal prosecution for a violation of Title 18, United States Code, Section 922(g)(9). However, the answers you furnish and any information or evidence resulting therefrom may be used against you in a prosecution for knowingly and willfully providing false statements or information, and in the course of agency disciplinary proceedings.

1. Have you ever been convicted of a misdemeanor crime of domestic violence within the meaning of the statute?

Initial and date: YES \_\_\_\_\_ NO \_\_\_\_\_

2. If you answered YES to the first question, provide the following information with respect to the conviction:

Court/Jurisdiction: \_\_\_\_\_

Docket/Case Number: \_\_\_\_\_

Statute/Charge: \_\_\_\_\_

Date sentenced: \_\_\_\_\_

I hereby certify that, to the best of my information and belief, all of the information provided by me is true, correct, complete, and made in good faith. I understand that false or fraudulent information provided herein may be grounds for adverse action, up to and including removal, and is also criminally punishable pursuant to federal law, including 18 U.S.C. §1001.

Name and Title:  
(print or type) \_\_\_\_\_

Agency/Duty Station: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

# **EXHIBIT 2**



DEPARTMENT OF THE TREASURY  
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS  
WASHINGTON, D.C. 20226

DIRECTOR

NOV 26 1996

OPEN LETTER TO ALL STATE AND LOCAL  
LAW ENFORCEMENT OFFICIALS

The purpose of this letter is to provide information to all State and local law enforcement agencies regarding one specific aspect of the recently enacted Omnibus Consolidated Appropriations Act of 1997 (the Act). One part of the Act amended the Gun Control Act of 1968 (GCA) to make it unlawful for any person convicted of a "misdemeanor crime of domestic violence" to ship, transport, possess, or receive firearms or ammunition. It also makes it unlawful for any person to sell or otherwise dispose of a firearm or ammunition to any person knowing or having reasonable cause to believe that the recipient has been convicted of such a misdemeanor. This new prohibition does apply to all law enforcement officers.

Act adds new firearms disability

As defined in the GCA, a "misdemeanor crime of domestic violence" means an offense that:

- (1) is a misdemeanor under Federal or State law; and
- (2) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.

This definition includes all misdemeanors that involve the use or attempted use of physical force (e.g., simple assault, assault and battery) if the offense is committed by one of the defined parties. This is true whether or not the State statute or local ordinance specifically defines the offense as a domestic violence misdemeanor. For example, a person convicted of misdemeanor assault against his or her

spouse would be prohibited from receiving or possessing firearms or ammunition. Moreover, the prohibition applies to persons convicted of such misdemeanors at any time, even if the conviction occurred prior to the new law's effective date, September 30, 1996. As of the effective date of the new law, such a person may no longer possess a firearm or ammunition. However, with respect to all persons, a conviction would not be disabling if it has been expunged, set aside, pardoned, or the person has had his or her civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense) AND the person is not otherwise prohibited from possessing firearms or ammunition.

New disability applies to law enforcement officers

In addition, the Act amended the GCA so that employees of government agencies convicted of qualifying misdemeanors would not be exempt from this new disability with respect to their receipt or possession of firearms or ammunition. Thus, law enforcement officers and other government officials who have been convicted of a qualifying misdemeanor will not be able to lawfully possess or receive firearms or ammunition for any purpose, including performing their official duties. This disability applies to firearms and ammunition issued by government agencies, firearms and ammunition purchased by officials for use in performing their official duties, and personal firearms and ammunition possessed by such officials.

In view of this amendment's effect on law enforcement officers, your department may want to determine if any employee who is authorized to carry a firearm is subject to this disability and what appropriate action should be taken. Employees subject to this disability must immediately ~~relinquish all firearms and ammunition in their possession.~~ The continued possession of firearms and ammunition by persons under this disability is a violation of law and may subject the possessor to criminal penalties. In addition, such firearms and ammunition are subject to seizure and forfeiture.

In cases where your agency becomes aware of individuals subject to this disability, we recommend that such persons be encouraged to relinquish all firearms and ammunition in their possession immediately to a third party, such as their attorney, their local police agency, or a firearms dealer.

If such person refuses to relinquish the firearm or ammunition, and your agency is without authority to retain or seize the firearm or ammunition, you should contact the local ATF office.

Brady Act

In the so-called "Brady States" Chief Law Enforcement Officers (CLEOs) "shall make a reasonable effort" to determine whether a prospective buyer's receipt of a handgun would be in violation of the law. CLEOs have five business days in which to make that reasonable effort. What constitutes a "reasonable effort" is to be determined by each law enforcement agency based on its own circumstances, e.g., the availability of resources, access to records, and the law enforcement priorities of the jurisdiction.

This "reasonable effort" standard is not altered by the addition of this new disqualifying category. It remains fully within the discretion of the CLEO to determine what effort is reasonable. For example, even if the CLEO determines that a misdemeanor assault conviction has occurred, it remains fully within the CLEO's discretion to determine whether to make further inquiry.

ATF forms are being revised to reflect the new category of prohibited persons.

If you have any questions concerning these new provisions, contact your local ATF office or the Firearms and Explosives Regulatory Division at 202-927-8300.

  
John W. Magaw  
Director

6

QUESTIONS AND ANSWERS REGARDING  
MISDEMEANOR CRIME OF DOMESTIC VIOLENCE

Q. X was convicted of misdemeanor assault on October 10, 1996. The crime of assault does not make specific mention of domestic violence but the criminal complaint reflects that he assaulted his wife. May X still possess firearms or ammunition?

A. No. X may no longer possess firearms or ammunition.

Q. X was convicted of the same crime on September 20, 1996, 10 days before the effective date of the new statute. He possesses a firearm on October 10, 1996. May X lawfully possess firearms?

A. No. If a person was convicted of the crime at any time, he or she may not lawfully possess firearms or ammunition on or after September 30, 1996.

Q. Officer C was charged with felony assault on her child in 1989. She pled guilty to a misdemeanor and the felony charge was dismissed. She was suspended from the police force and ordered to undergo counseling. After successful completion of the counseling, she was reinstated. May Officer C lawfully possess firearms or ammunition?

A. No. Officer C may no longer lawfully possess firearms or ammunition either on or off duty.

Note: For one who has been convicted of a misdemeanor crime of domestic violence, the prohibition on the possession of firearms and ammunition does not apply if the individual has received a pardon for the crime, the conviction has been expunged or set-aside, or the person has had civil rights restored (if there was a loss of civil rights) AND the person is not otherwise prohibited from possessing firearms or ammunition.

QUESTIONS AND ANSWERS REGARDING  
MISDEMEANOR CRIME OF DOMESTIC VIOLENCE

Q. X was convicted of misdemeanor assault on October 10, 1996. The crime of assault does not make specific mention of domestic violence but the criminal complaint reflects that he assaulted his wife. May X still possess firearms or ammunition?

A. No. X may no longer possess firearms or ammunition.

Q. X was convicted of the same crime on September 20, 1996, 10 days before the effective date of the new statute. He possesses a firearm on October 10, 1996. May X lawfully possess firearms?

A. No. If a person was convicted of the crime at any time, he or she may not lawfully possess firearms or ammunition on or after September 30, 1996.

Q. Officer C was charged with felony assault on her child in 1989. She pled guilty to a misdemeanor and the felony charge was dismissed. She was suspended from the police force and ordered to undergo counseling. After successful completion of the counseling, she was reinstated. May Officer C lawfully possess firearms or ammunition?

A. No. Officer C may no longer lawfully possess firearms or ammunition either on or off duty.

Note: For one who has been convicted of a misdemeanor crime of domestic violence, the prohibition on the possession of firearms and ammunition does not apply if the individual has received a pardon for the crime, the conviction has been expunged or set-aside, or the person has had civil rights restored (if there was a loss of civil rights) AND the person is not otherwise prohibited from possessing firearms or ammunition.

# **EXHIBIT 3**



DIRECTOR

DEPARTMENT OF THE TREASURY  
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS  
WASHINGTON, D.C. 20226

OPEN LETTER FROM THE DIRECTOR  
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

The purpose of this letter is to provide the public with information concerning a recent amendment to the Gun Control Act of 1968. This amendment makes it unlawful for any person convicted of a "misdemeanor crime of domestic violence" to ship, transport, possess, or receive firearms or ammunition. It also makes it unlawful for any person to sell or otherwise dispose of a firearm or ammunition to any person knowing or having reasonable cause to believe that the recipient has been convicted of such a misdemeanor.

As defined in the new law, a "misdemeanor crime of domestic violence" means an offense that:

- (1) is a misdemeanor under Federal or State law; and
- (2) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.

This definition includes all misdemeanors that involve the use or attempted use of physical force (e.g., simple assault, assault and battery), if the offense is committed by one of the defined parties. This is true whether or not the State statute or local ordinance specifically defines the offense as a domestic violence misdemeanor. For example, a person convicted of misdemeanor assault against his or her spouse would be prohibited from receiving or possessing firearms. Moreover, the prohibition applies to persons convicted of such misdemeanors at any time, even if the conviction occurred prior to the new law's effective date, September 30, 1996. As of the effective date of the new law, such a person may no longer possess a firearm or

- 2 -

ammunition. However, a conviction would not be disabling if it has been expunged, set aside, pardoned, or the person has had his or her civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense) AND the person is not otherwise prohibited from possessing firearms or ammunition.

Individuals subject to this disability should immediately lawfully dispose of their firearms and ammunition. We recommend that such persons relinquish their firearms and ammunition to a third party, such as their attorney, to their local police agency, or a Federal firearms dealer. The continued possession of firearms or ammunition by persons under this disability is a violation of law and may subject the possessor to criminal penalties. In addition, such firearms and ammunition are subject to seizure and forfeiture.

If you have questions regarding this matter, please contact your local ATF office.

  
John W. Magaw  
Director

# **EXHIBIT 4**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**THE FRATERNAL ORDER OF POLICE,**  
309 Massachusetts Avenue, N.E., Washington, 20002,  
A National Police Organization.

**Plaintiff,**

**vs.**

**Civil Action No.**

**HON. ROBERT E. RUBIN, Secretary of the Treasury,**  
1500 Pennsylvania Ave., N.W. Washington D.C., 20220 and

**HON. JOHN MAGAW, Director Bureau of Alcohol,**  
Tobacco and Firearms,  
650 Massachusetts Ave., Washington D.C. 20016.

**Defendants.**

**AFFIDAVIT**

1. I, Gilbert G. Gallegos, do hereby depose and state:
2. I am a United States citizen and am under no disability that prevents me from making this statement.
3. I am career law enforcement officer currently retired from the Albuquerque, New Mexico police department. (APD)
4. I am the duly elected president of the Fraternal Order of Police. (FOP)
5. The FOP is a duly organized fraternal organization incorporated in the State of Pennsylvania with an office in Washington, D.C. and whose membership includes Federal, State, County, Local and Campus law enforcement agencies and individual officers.
6. The FOP has several purposes including the protection of legal rights of its members. See Attachment No. 1 hereto (FOP Constitution excerpts).
7. The FOP has institutional or individual members in every state of these United States.
8. Upon information and belief, FOP members in each of the several States, including both law enforcement agencies and individual members are subject to recent Congressional enactments relating to firearms as set forth in the FOP's verified federal Complaint for Declaratory and Injunctive Relief.
9. I am submitting this sworn statement in support of the FOP's verified

Complaint for Declaratory and Injunctive Relief to be filed in United States District Court for the District of Columbia.

10. Purposes of this statement include but are not limited to:
  - a. illumination and demonstration of the impact of recent amendments to the federal Gun Control Act on the rank and file members of the FOP.
  - b. squarely placing the matters of FOP concern regarding the application the amendments into the record at the earliest possible point in the process of review.
  - c. protection of constitutional rights of the members of the FOP, in both their individual and official capacities.
  - d. demonstration of the national and far reaching impact on law enforcement activities as a result of the government's enforcement and implementation position.
11. This statement is submitted in lieu of use of affidavits from individual FOP members to emphasize the need for immediate and comprehensive review as well as conserve judicial and party resources.
12. The Verified Complaint and this affidavit are germane to the purposes of the FOP as an organization and to my role within the FOP as the President of the FOP.
13. In the normal course of executing my responsibilities as President I often gain direct and personal knowledge of issues and matters affecting rank and file members of the FOP.
16. The representations made herein regarding the impact on State and local and federal agencies are the result of information of which I am personally aware except where stated upon information and belief.

The Gun Control Act Amendments and Implementation and Enforcement

17. I have personal knowledge of the amendments to the Gun Control Act enacted by Congress and signed into law by President Clinton. See Attached Amendments hereto.
18. I have personal knowledge of the enforcement position taken by the federal government through correspondences received from the Bureau of Alcohol, Tobacco and Firearms. See Attachment Nos. 1, 2 and 3 to FOP's Verified Complaint.
19. Upon information and belief, no appropriation has been forthcoming by Congress or any State or local entity to provide law enforcement agencies with funds to execute the duties imposed by ATF's enforcement mandate.
20. I have personal knowledge of the confusion and uncertainty created within several state and local and federal law enforcement agencies as a result of the enactments and ATF's enforcement position.

21. In particular, I am aware of officers and FOP members at the State and local and Federal levels of law enforcement that have been requested to disclose information regarding the application of the enactment to themselves as well as others.
22. Upon information and belief, the general purpose of the information gathering and disclosure is to determine the application of the enactments to fully certified and employed law enforcement officers currently employed and authorized to possess government issued firearms for public safety purposes.
23. Under ATF's enforcement position, State, local and Federal law enforcement agencies bear a non-discretionary duty to gather information and those persons generally responsible are those charged with the responsibility of hiring, firing and promoting law enforcement officers, and further non-discretionary duty exists to disclose the results of such investigation to ATF for use, at a minimum, in determining whether federal deputations will be revoked.
24. Upon information and belief, every non-federal law enforcement officer must expend fiscal and administrative resources to fulfill the non-discretionary federal duty and must disable any member of the agency upon a finding that the enactment applies to a particular member of the agency.
25. Upon information and belief, no law enforcement agency has a well developed policy on how to implement this non-discretionary duty.
26. Upon information and belief, no law enforcement agency has a well developed policy how to respond to information indicating a particular member of an agency must be disabled.
27. Upon information and belief, the federal government does not know the overall impact on law enforcement agencies as a result of the application of the ATF enforcement policy and therefore cannot measure the impact on officer and public safety.
28. Upon information and belief the federally mandated duty forces law enforcement leaders to command their subordinate officers to provide information that may constitute an admission of a violation of federal law as well as a predicate for loss of status, role within an agency and ultimately with termination of employment.
29. Upon information and belief, the federally mandated duty to investigate all officers and compel disclosure of information that may result in demotion, reassignment or termination has a drastic and irremediable impact on agency and officer morale and trust.
30. Due to the nature of law enforcement activities, law enforcement agencies are highly dependent on professional trust and cohesiveness to ensure officer and public safety.
31. The loss of such trust and cohesiveness has an immediate and irremediable impact on the ability of law enforcement agencies and their officers to execute their statutorily mandated duties.

32. Upon information and belief, decreases in an agencies' ability to fulfill its statutorily mandated duties has an irremediable impact on officer and public safety.
33. Based on my personal experience as a law enforcement officer, both as a field officer and as an officer with administrative responsibilities, the rapid implementation and enforcement of the amendments will have an immediate and irremediable impact on the ability of law enforcement agencies throughout the country to perform their mandated duties.

FURTHER AFFIANT SAYETH NOT

Gilbert G. Gallegos  
Gilbert G. Gallegos

1/21/97  
Date

City of Washington }  
District of Columbia } SS:

21<sup>st</sup> Sworn to me before me and subscribed in my presence by Gilbert G. Gallegos this day of January 1997.

Notary Public

my com exp 8/31/97

CONSTITUTION AND BY-LAWS

OF THE

# FRATERNAL ORDER OF POLICE

A NATIONAL POLICE ORGANIZATION



NATIONAL HEADQUARTERS  
1410 DONELSON PIKE, A-17  
NASHVILLE, TENNESSEE 37217

REVISED AT THE  
52ND BIENNIAL CONFERENCE  
JULY 31 - AUGUST 3, 1995  
VIRGINIA BEACH, VIRGINIA

GILBERT G. GALLEGOS  
NATIONAL PRESIDENT

JERRY W. ATNIP  
NATIONAL SECRETARY

## OFFICIAL STATEMENT

The Fraternal Order of Police is a non-profit corporation formed under the laws of the Commonwealth of Pennsylvania. The Court of Common Pleas of Allegheny County, Pennsylvania, entered the Decree of Incorporation on the 17th day of November 1915. The original Articles were recorded on the 18th day of November 1915, in the office of the Recorder of Deeds of Allegheny County, Pennsylvania, in Charter Book Volume 49, Page 350. Pursuant to the provisions of the laws of Pennsylvania application to the Court of Common Pleas of Allegheny County, Pennsylvania, to amend the original charter was duly made on the first day of June 1940, in the Office of the Recorder of Deeds of Allegheny County, Pennsylvania. Further Amendments were approved on February 22, 1974.

At the First Annual Convention a Grand Lodge of the Fraternal Order of Police was formed and by proper action said Grand Lodge was authorized and empowered to use the corporate name of the Fraternal Order of Police and to exercise and perform all corporate rights, privileges, powers, authorities and franchises of the Fraternal Order of Police.

The Constitution, as set forth herein, was adopted November 18, 1915, and amended at Official Annual Conventions subsequently, including the First Annual Convention held at Pittsburgh, October 15, 1917, the 36th National Biennial Conference held at Norfolk, Virginia, August 18-22, 1963, the 40th Biennial Conference held at Phoenix, Arizona, August 8-12, 1971, the 41st Biennial Conference held at Las Vegas, Nevada, August 5-10, 1973, the 43rd Biennial Conference held at Providence, Rhode Island, August 8-12, 1977, the 45th Biennial Conference held at Orlando, Florida, August 18-21, 1981, the 46th Biennial Conference held at Phoenix, Arizona, August 22-26, 1983, the 47th Biennial Conference held at Baltimore, Maryland, August 6-9, 1985, the 48th Biennial Conference held at Mobile, Alabama, August 11-14, 1987, and the 49th Biennial Conference held at Oklahoma City, Oklahoma, August 1-4, 1989, and the 50th Biennial Conference held at Pittsburgh, Pennsylvania, August 12-15, 1991, 51st Biennial Conference held at Louisville, Kentucky, August 9-12, 1993 and the 52nd Biennial Conference held at Virginia Beach, Virginia, July 31-August 3, 1995.

Prior to August 11, 1947, the By-laws were included in the Constitution. On August 11, 1947, at the 28th Annual Convention, the By-laws were adopted separately. On August 13, 1991, at the Fiftieth (50th) Biennial Conference held in Pittsburgh, Pennsylvania, a substantial revision of the Constitution and By-laws was adopted by the delegates there in attendance. While incorporating many portions of the Constitution and By-laws then in effect, the revision restructures the Constitution and By-laws.

This Official Statement, Contents, and Indices are provided for historical purposes and convenience. They are not a part of the Constitution and may not be relied on for any purpose.

## CONSTITUTION

|            |                                                     |    |
|------------|-----------------------------------------------------|----|
|            | Preamble .....                                      | 1  |
| ARTICLE 1  | Name .....                                          | 2  |
| ARTICLE 2  | Character .....                                     | 2  |
| ARTICLE 3  | Definitions .....                                   | 3  |
| ARTICLE 4  | Membership .....                                    | 4  |
| ARTICLE 5  | Organization .....                                  | 5  |
| ARTICLE 6  | National Officers .....                             | 6  |
| ARTICLE 7  | National Executive Board .....                      | 7  |
| ARTICLE 8  | National Board of Trustees .....                    | 8  |
| ARTICLE 9  | National President .....                            | 9  |
| ARTICLE 10 | Immediate Past National President .....             | 10 |
| ARTICLE 11 | National Vice President .....                       | 10 |
| ARTICLE 12 | National Secretary .....                            | 11 |
| ARTICLE 13 | National Treasurer .....                            | 12 |
| ARTICLE 14 | National Second Vice President .....                | 13 |
| ARTICLE 15 | National Sergeant at Arms .....                     | 13 |
| ARTICLE 16 | National Trustee .....                              | 14 |
| ARTICLE 17 | Delegates .....                                     | 14 |
| ARTICLE 18 | General Counsel .....                               | 16 |
| ARTICLE 19 | State and Subordinate Lodges .....                  | 16 |
| ARTICLE 20 | Associate Lodges .....                              | 19 |
| ARTICLE 21 | Auxiliaries .....                                   | 19 |
| ARTICLE 22 | International Affiliate Lodges and Membership ..... | 20 |
| ARTICLE 23 | Discipline .....                                    | 20 |
| ARTICLE 24 | Legal Aid .....                                     | 25 |
| ARTICLE 25 | Resolutions .....                                   | 26 |
| ARTICLE 26 | Official Journal .....                              | 26 |
| ARTICLE 27 | Official Order of Business .....                    | 26 |
| ARTICLE 28 | Parliamentary Procedure .....                       | 27 |
| ARTICLE 29 | Official Ritual .....                               | 27 |
| ARTICLE 30 | Constitutional Amendments .....                     | 27 |
| ARTICLE 31 | Dues, Assessment and Administrative Fees .....      | 28 |

## BY-LAWS

|            |                                                                |    |
|------------|----------------------------------------------------------------|----|
| ARTICLE 1  | Name and Insignia .....                                        | 30 |
| ARTICLE 2  | Character .....                                                | 30 |
| ARTICLE 3  | [RESERVED] .....                                               | 30 |
| ARTICLE 4  | [RESERVED] .....                                               | 30 |
| ARTICLE 5  | Organization .....                                             | 31 |
| ARTICLE 6  | National Officers .....                                        | 33 |
| ARTICLE 7  | National Executive Board .....                                 | 33 |
| ARTICLE 8  | National Trustees .....                                        | 33 |
| ARTICLE 9  | National President .....                                       | 34 |
| ARTICLE 10 | Past National Presidents .....                                 | 34 |
| ARTICLE 11 | National Vice President .....                                  | 35 |
| ARTICLE 12 | National Secretary .....                                       | 35 |
| ARTICLE 13 | National Treasurer .....                                       | 35 |
| ARTICLE 14 | National Second Vice President .....                           | 36 |
| ARTICLE 15 | National Sergeant at Arms .....                                | 36 |
| ARTICLE 16 | National Trustee .....                                         | 36 |
| ARTICLE 17 | Delegates [RESERVED] .....                                     | 36 |
| ARTICLE 18 | General Counsel .....                                          | 37 |
| ARTICLE 19 | State and Subordinate Lodges .....                             | 37 |
| ARTICLE 20 | Associate Lodges [RESERVED] .....                              | 37 |
| ARTICLE 21 | Auxiliaries [RESERVED] .....                                   | 37 |
| ARTICLE 22 | International Affiliate Lodges and Membership [RESERVED] ..... | 37 |
| ARTICLE 23 | Discipline and Hearings .....                                  | 37 |
| ARTICLE 24 | Legal Aid .....                                                | 39 |
| ARTICLE 25 | Resolutions .....                                              | 40 |
| ARTICLE 26 | Official Journal .....                                         | 40 |
| ARTICLE 27 | Official Order of Business [RESERVED] .....                    | 40 |
| ARTICLE 28 | Parliamentary Procedure [RESERVED] .....                       | 40 |
| ARTICLE 29 | Annual Budget .....                                            | 40 |
| ARTICLE 30 | By-law Amendments .....                                        | 41 |
| ARTICLE 31 | Dues, Assessments, and Administrative Fees .....               | 42 |

# CONSTITUTION

## Preamble

We, the law enforcement officers of the United States and of the several states and political subdivisions thereof, as representatives and delegates of state and subordinate lodges, do hereby associate the several lodges we represent and the members thereof for the following purposes:

*To support and defend the Constitution of the United States; to inculcate loyalty and allegiance to the United States of America; to promote and foster the enforcement of law and order; to improve the individual and collective proficiency of our members in the performance of their duties; to encourage fraternal, educational, charitable and social activities among law enforcement officers; to advocate and strive for uniform application of the civil service merit system for appointment and promotion; to support the improvement of the standard of living and working conditions of the law enforcement profession through every legal and ethical means available; to create and maintain tradition of esprit de corps insuring fidelity to duty under all conditions and circumstances; to cultivate a spirit of fraternalism and mutual helpfulness among our members and the people we serve; to increase the efficiency of the law enforcement profession and thus more firmly to establish the confidence of the public in the service dedicated to the protection of life and property.*

All terms used herein to denominate gender shall be generic and, whenever appropriate, the singular shall include the plural and the plural shall include the singular.

## **ARTICLE 1**

### **Name**

**Section 1.** This organization shall be known as the FRATERNAL ORDER OF POLICE.

**Section 2.** The National Board of Trustees shall have the sole and exclusive right to authorize, control, license and restrict the use of the name, insignia or emblem and mark, trademark or service mark of the Fraternal Order of Police. The National Secretary shall police the trademark of the Order and shall grant or refuse to grant permission to use the trademark of the Order as hereinafter set forth or as may be, from time to time, prescribed by the National Board of Trustees.

**Section 3.** State and subordinate lodges, by virtue of their affiliation with the Grand Lodge, shall have the right to use the name, insignia, emblem and mark, trademark or service mark of the Fraternal Order of Police in order to signify or denote their affiliation therewith. In the case of prospective for profit uses of the name, insignia, emblem or mark, trademark or service mark of the Fraternal Order of Police, or such other use that may place such state or subordinate lodge in competition with the Grand Lodge, such permission may be withheld by the National Board of Trustees.

## **ARTICLE 2**

### **Character**

**Section 1.** The Fraternal Order of Police is an organization consisting of state and subordinate lodges of professional law enforcement officers in the United States and such international affiliate lodges as shall, from time to time, be accepted in accordance herewith.

**Section 2.** The Fraternal Order of Police is a fraternal organization composed of professional law enforcement personnel who have joined together for their common good. In no event shall the Fraternal Order of Police join or be controlled by any labor organization, provided, however, that this Section shall not prohibit cooperative efforts by the National, state or subordinate lodges of the Fraternal Order of Police with labor organizations for their common good.

**Section 3.** The Fraternal Order of Police shall not strike or by concerted action cause a cessation of the performance of police duties, or induce other members or lodges to do likewise.

**Section 4.** This Constitution shall be the fundamental law of the Order and, with the Rituals adopted at the National Biennial Conferences, and such By-laws as may be adopted from time to time, shall govern the conduct of the Grand Lodge and all state and subordinate lodges.

**Section 5.** There shall be By-laws which shall govern the day to day operation and administration of the Grand Lodge. The By-laws of the Order may only be promulgated, amended, or revised by a vote of two-thirds (2/3) of the delegates voting at the Biennial Conference.

### ARTICLE 3

#### Definitions

Section 1. As used herein, the following terms, phrases or words shall be defined as follows:

A. **"Elected law enforcement officer"** shall mean for purposes hereof any law enforcement officer who meets the qualifications in Article 4, Section 1, or who by law is exempted from meeting the minimum training standards.

B. **"Full-time employed"** shall mean law enforcement officers that are engaged in such employment as their full-time occupation.

C. **"Good Cause"** shall mean nonfeasance, malfeasance, dishonesty, or refusal to carry out the will of the Biennial Conference.

D. **"Lodge in good standing"** shall mean a lodge which is not greater than thirty (30) days in arrears in the payment of all dues, delinquency fees and assessments due and payable to or for the Grand Lodge on behalf of its members. Any lodge in arrears of payment of dues or assessments more than thirty (30) days and less than ninety (90) days shall be deemed to be delinquent and not in good standing. Any lodge in arrears of payment of dues or assessments more than eighty-nine (89) days shall be and is hereby automatically suspended from membership in good standing in the Fraternal Order of Police.

E. **"Member in good standing"** in respect to the Grand Lodge, shall mean a member who fulfilled all requirements of membership in good standing in his respective subordinate and state lodges and for whom appropriate per capita tax has been paid to the Grand Lodge. Any member belonging to a state or subordinate lodge that is delinquent or has been suspended shall not be a member in good standing.

F. **"National Board of Trustees"** shall refer to the collective body consisting of the National President, each of the Past National Presidents, the National Vice President, the National Secretary, the National Treasurer, the National Second Vice President, the National Sergeant at Arms, each National Trustee and the Chairman of the National Trustees.

G. **"National Executive Board"** shall mean and consist of the National President, National Vice President, National Secretary, National Treasurer, National Second Vice President, National Sergeant at Arms and the Chairman of the National Trustees.

H. **"National Trustees"** shall mean the individual elected National Trustees or the collective body thereof (excluding the National Executive Board) who may meet from time to time as provided in Article 8 and Article 16 of this Constitution.

I. **"Past National President"** shall be defined as any person elected to the office of National President by a Biennial Conference and who served not less than one (1) full term and was not removed from office.

J. "Regularly appointed law enforcement officer" shall mean, for purposes hereof, any law enforcement officer who meets the minimum standards, has received the training and education required by the United States, the state, the political subdivision or agency by which they are appointed, and is granted arrest powers.

## **ARTICLE 4**

### **Membership**

**Section 1.** Any regularly appointed or elected and full-time employed law enforcement officer of the United States, any state or political subdivision thereof, or any agency may be eligible for membership in the Fraternal Order of Police, subject to the provisions of this Constitution. No person shall be denied membership on account of race, religion, color, creed, sex, age or national origin.

**Section 2.** Subject only to the provisions of this Constitution, each state and subordinate lodge shall be the judge of its membership. Each state and subordinate lodge shall establish requirements for membership in good standing of its respective membership, which requirements shall not be inconsistent herewith.

**Section 3.** There shall be three (3) classes of membership: Active, Retired and Honorary.

**A. Active Membership**

1. Shall include regularly appointed or elected full-time law enforcement officers.
2. May include retired regularly appointed or elected law enforcement officers.
3. May include, subject to the approval of his state and subordinate lodges, regularly appointed or elected law enforcement officers who have resigned from their law enforcement duties and who have remained in good standing with their state and subordinate lodges.
4. Only active members, as herein defined, shall have voice and vote.

**B. Retired Membership** shall be comprised of retired regularly appointed or elected law enforcement officers who withdraw from active membership upon or after retirement from their law enforcement agency.

**C. Honorary Membership** shall be comprised of individuals recognized by the Grand Lodge, state lodge or subordinate lodges for exceptional service or contribution to the nation, the state, political subdivision, the law enforcement community or the Fraternal Order of Police.

**Section 4.** No person shall be a member of more than one state or subordinate lodge at

# **EXHIBIT 5**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**THE FRATERNAL ORDER OF POLICE,**  
309 Massachusetts Avenue, N.E., Washington, 20002,  
A National Police Organization.

**Plaintiff,**

**vs.**

**Civil Action No.**

**HON. ROBERT E. RUBIN,** Secretary of the Treasury,  
1500 Pennsylvania Ave., N.W. Washington D.C., 20220 and

**HON. JOHN MAGAW,** Director Bureau of Alcohol,  
Tobacco and Firearms,  
650 Massachusetts Ave., Washington D.C. 20016.

**Defendants.**

**AFFIDAVIT**

I, James O. Pasco Jr., do hereby depose and state:

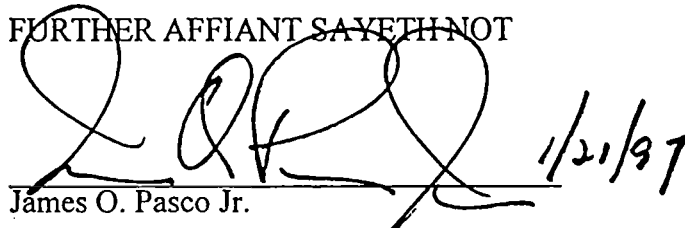
1. I am a United States citizen and am under no disability that prevents me from making this statement.
2. I am the Executive Director of the Fraternal Order of Police (FOP) and have had this role since 1995.
3. This affidavit is submitted in furtherance of my duties as Executive Director and in support of the FOP's Verified Complaint for Declaratory and Injunctive Relief.

**Legislative Issues Regarding the Challenged Amendments to the GCA**

4. In the normal course of executing my responsibilities as Executive Director I receive, review, analyze and report to the FOP national leadership as well as the membership generally, on legislation or proposed legislation relating to the FOP and its members.
5. I am personally aware of the 1996 amendments to the GCA that themselves appeared as amendments to an extensive budget enactment that effectively precluded close debate regarding the merits and constitutionality of the proposed GCA amendments. See Attached copy of amendments.
6. Based on my personal knowledge of the legislative process prior to the GCA amendment adoption, and review of the the minimal legislative history generated, very little discussion, debate or other full airing and review of the proposed amendments occurred.

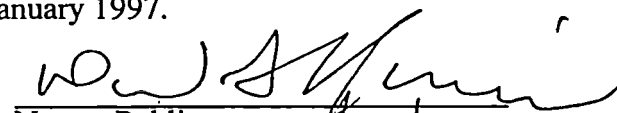
7. Based on my personal knowledge of the legislative process prior to GCA amendment adoption, I believe the amendments as adopted and enacted achieved results not intended by the majority of the members of Congress that voted for the legislation and in particular, almost no discussion regarding the removal of an exception for government employees was undertaken.
8. Upon information and belief, the impact of these retroactive amendments on the military, federal agencies including the Secret service, FBI, as well as State, County, Local and Campus law enforcement agencies is fiscally, administratively and professionally immense.
9. Upon information and belief, two bills have been prepared by members of Congress to address the enactment's results that were inconsistent with Congressional intent. See Attachment hereto.
10. Upon information and belief the Bills will be heard within 60 days of introduction.

FURTHER AFFIANT SAYETH NOT

 1/21/97  
James O. Pasco Jr.

City of Washington     )  
District of Columbia    ) SS:

21st Sworn to me before me and subscribed in my presence by Gilbert G. Gallegos this  
day of January 1997.

  
Notary Public  
my com exp 8/31/97

**GUN BAN FOR INDIVIDUALS CONVICTED OF A MISDEMEANOR CRIME OF DOMESTIC VIOLENCE**

(a) **DEFINITION.**--Section 921(a) of title 18, United States Code, is amended by adding at the end the following:

(33) (A) Except as provided in subparagraph (C), the term 'misdemeanor crime of domestic violence' mean an offense that--  
 "(i) is a misdemeanor under Federal or State law; and  
 "(ii) has, as an element, the use or attempted use of physical force or the threatened use of a deadly weapons, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.

"(B)(i) A person shall not be considered to have been convicted of such an offense for purposes of this chapter, unless--  
 "(I) the person was represented by counsel in the case, or knowingly and intelligently waived the right to counsel in the case; and  
 (II) in the case of a prosecution for an offense described in this paragraph for which a person was entitled to a jury trial in the jurisdiction in which the case was tried, either  
 (aa) the case was tried by a jury, or  
 (bb) the person knowingly and intelligently waived the right to have the case tried by a jury, by guilty plea or otherwise.  
 "(ii) A person shall not be considered to have been convicted of such an offense for purposes of this chapter if the conviction has been expunged or set aside, or is an offense for which the person has been pardoned or has had civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms."

(b) **PROHIBITIONS.**--

(1) Section 922(d) of such title is amended--  
 (A) by striking "or" at the end of paragraph (7);  
 (B) by striking the period at the end of paragraph (8) and inserting ";or"; and  
 (C) by inserting after paragraph (8) the following:  
 "(9) has been convicted in any court of a misdemeanor crime of domestic violence."  
 (2) Section 922(g) of such title is amended--  
 (A) by striking "or" at the end of paragraph (7);  
 (B) by striking the comma at the end of paragraph (8) and inserting "; and  
 (C) by inserting after paragraph (8) the following:  
 "(9) who has been convicted in any court of a misdemeanor crime of domestic violence,".  
 (3) Section 922(s)(3)(B)(i) of such title is amended by inserting ", and has not been convicted in any court of a misdemeanor crime of domestic violence" before this semicolon.

(c) **GOVERNMENT ENTITIES NOT EXCEPTED.**--Section 925(a)(1) of such title is amended by inserting "sections 922(d)(9) and 922(g)(9) and" after "except for".

105TH CONGRESS  
1ST SESSION

**H. R.** 26

---

IN THE HOUSE OF REPRESENTATIVES

Mr. BARR of Georgia introduced the following bill; which was referred to the  
Committee on \_\_\_\_\_

---

**A BILL**

To amend title 18, United States Code, to provide that  
the firearms prohibitions applicable by reason of a do-  
mestic violence misdemeanor conviction do not apply if  
the conviction occurred before the prohibitions became  
law.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 SECTION 1. FIREARMS PROHIBITIONS APPLICABLE BY  
2 REASON OF A DOMESTIC VIOLENCE MIS-  
3 DEMEANOR CONVICTION NOT TO APPLY TO  
4 CONVICTIONS OBTAINED BEFORE THE PRO-  
5 HIBITIONS BECAME LAW.

6 Subsections (d)(9), (g)(9), and (s)(3)(B)(i) of section  
7 922 of title 18, United States Code, are each amended  
8 by inserting “, on or after September 28, 1996,” before  
9 “of a misdemeanor”.

105TH CONGRESS  
1ST SESSION

**H. R. 445**

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IN THE HOUSE OF REPRESENTATIVES

Mr. STUPAK introduced the following bill; which was referred to the  
Committee on \_\_\_\_\_

---

**A BILL**

To provide that the firearms prohibitions applicable by reason of a domestic violence misdemeanor conviction do not apply to government entities.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 SECTION 1. FIREARMS PROHIBITIONS APPLICABLE BY  
2 REASON OF A DOMESTIC VIOLENCE MIS-  
3 DEMEANOR CONVICTION MADE RETRO-  
4 ACTIVELY INAPPLICABLE TO GOVERNMENT  
5 ENTITIES.

6 (a) IN GENERAL.—Section 925(a)(1) of title 18,  
7 United States Code, is amended by striking “sections  
8 922(d)(9) and (g)(9) and”.

9 (b) RETROACTIVITY.—The amendment made by sub-  
10 section (a) of this section shall take effect as if the amend-  
11 ment had been included in section 658 of the Treasury,  
12 Postal Service, and General Government Appropriations  
13 Act, 1997 (as contained in section 101(f) of the Omnibus  
14 Consolidated Appropriations Act, 1997), on the date of  
15 the enactment of such Act. Any liability, penalty, or for-  
16 feiture incurred by any person who would not have been  
17 subject to the liability, penalty, or forfeiture if the amend-  
18 ment made by subsection (a) had been so included, by rea-  
19 son of the application of any amendment made by such  
20 section 658 to a conviction for a misdemeanor crime of  
21 domestic violence (as defined in section 921(a)(33) of title  
22 18, United States Code) is hereby extinguished, and any  
23 action or prosecution for the enforcement of any such li-  
24 ability, penalty, or forfeiture shall not be sustained.

# **EXHIBIT 6**

# Federal gun law stops 3 cops

Officers convicted on domestic violence charges are ordered to surrender weapons

By John C. Ensslin

Rocky Mountain News Staff Writer



Alex Woods Jr.

Three Denver police officers with misdemeanor domestic violence convictions were ordered to turn in their guns Monday and take desk jobs as the department complied with a new federal gun control law.

The move came amid sweeping new restrictions that will affect all Americans, including law enforcement officers and military personnel. The law bans firearms possession by people convicted of

domestic violence offenses.

The new law — an extension of the 1968 Gun Control Act — took effect Sept. 30. But it wasn't until the Bureau of Alcohol, Tobacco and Firearms sent a memo to big city police departments that Denver police commanders acted.

The memo pointed out that the new law does not exempt law enforcement officers or the military personnel.

"It's going to have far-reaching effects for all citizens, but we'll make a good faith effort to comply," said Lt. John Lamb of the

department's civil liabilities unit.

The president of a union representing Denver's 1,426 police officers said his group and other national police organizations will challenge the new law in court.

"We're totally against it. We're angry and we're shocked," said Alex Woods Sr., president of the Police Protective Association. "It's ludicrous that they would come out with a bill like this."

Woods' son, Alex Jr., a patrolman with four years on the force, is one of three Denver officers affected. The others are Detective James A. Huff, a 26-year-veteran, and patrolman Alfred E. Koger, a 24-year veteran.

The three officers could not be reached for comment.

A Denver jury convicted Alex Woods Jr. in May 1995 of assaulting his girlfriend by choking and hitting her in an upstairs bedroom during a Christmas party.

He was sentenced to one year's probation and 36 weeks of domestic violence counseling.

"He just thinks it's unfair," his father said. "He paid his dues. He was suspended, and he did the counseling that the court mandated."

The other two officers' convictions involved domestic violence offenses against a 14-year-old child and a wife, police said.

Woods Sr. said he expects the new law to be overturned on grounds that it adds penalties to past violations of the law retroactively.

See GUN LAW on 10A

Rocky Mountain News, Tues., Dec. 3, 1996

## Critics say law illegally adds penalties

### GUN LAW from 4A

Many defendants would not have agreed to plea agreements or declined to appeal domestic-violence convictions if they had known then that the charge would someday bar them from possessing weapons.

Denver police Chief David Michaud said he'll wait and see what happens at the national level before deciding what to do with the three officers.

"Their worst-case scenario is, if there is no reversal, they'll lose their jobs," Michaud said.

Denver police also have questions about how the law affects six

other officers convicted of domestic violence offenses under city ordinance.

These are generally lesser charges than a third-degree assault and are not classified as misdemeanors. No action has been directed toward those six officers, pending clarification from ATF officials.

What the ATF memo does state is that the weapons ban applies to anyone convicted of a misdemeanor under federal or state law. The memo urges law enforcement officials to encourage any such person to relinquish a firearm or ammunition to a third party, such as a police agency, lawyer or gun dealer. Police agencies Monday were still unsure how the law will be

enforced.

Aurora Deputy Chief Mike Stiers said his department has three officers who might be affected.

"We've decided to seek more information," Stiers said. "We won't be, as of right now, modifying anybody's job, until we get a more defined clarification."

Arapahoe County Sheriff Pat Sullivan said his department is still checking records but has not found anyone who is affected. Spokesmen for Fort Carson and the U.S. Air Force Academy said they are still discussing the issue with their attorneys.

Staff Writer Tillie Fong contributed to this report.

# Gun law disarms 3 cops

By Peter G. Chronis  
and Marilyn Robinson  
Denver Post Staff Writers

Three Denver police officers were told to turn in their guns yesterday because a new federal law bans anybody with a misdemeanor domestic-violence conviction from possessing firearms or ammunition.

The three were identified as Detective James A. Huff, a 26-year veteran; officer Fred E. Kroger, a 24-year veteran; and Officer Alex Woods Jr., who has been on

## NEW YORK POST 12/31/94 New domestic-violence rule invoked

the force four years. Police officials said the three would be reassigned to duties that don't require them to carry firearms for the time being. Ultimately, they could lose their jobs, officials said.

In the meantime, other metro-area law enforcement agencies were checking their records to see if any of their officers might fall under the new federal ban, signed into

law Sept. 30.

During a news conference at Denver Police Chief David Alchaud's office, Deputy Chief Tom Sanchez and Lt. John Lamb, the police departments legal adviser, said the U.S. Bureau of Alcohol, Tobacco and Firearms late last week notified law enforcement agencies that provisions of the new law applied to law enforcement officers as

well as ordinary citizens.

The city has 1,426 police officers. More than 8,000 domestic-violence cases are filed each year in Denver, so many ordinary citizens might have to surrender their firearms as well.

U.S. Attorney Henry Solano said the amendment to the Gun Control Act of 1968 applies to everybody convicted of misdemeanor domestic violence, including the

Please see DOMESTIC on 20A

## Domestic-violence law disarms 3 cops

DOMESTIC from Page 1A

military and law enforcement, "and failure to dispose of firearms could result in federal prosecution."

Solano said several other large-city police departments were holding similar news conferences on the issue yesterday.

Violation is a federal felony, with a penalty of up to 10 years in prison and a \$250,000 fine, Solano said.

Solano said Jerry Petrilli, agent in charge of the ATF Denver office, there are no active cases involving police officers.

Last week, ATF Director John McGraw sent an advisory letter to state and local law enforcement agencies, saying the new provision "does apply to all law enforcement officers."

The amendment prohibits the possession of firearms or ammunition by anybody convicted of a domestic-violence misdemeanor under state or federal law. The conviction must have involved "the use or attempted use of physical force, or the threatened use of a deadly weapon."

The ATF also advised that those affected immediately relinquish guns and ammo to either a police agency, federally licensed fire-

arms dealer or other third party who can legally possess firearms.

Lamb and Sanchez said the department is seeking clarification as to whether the ban applies to a half-dozen officers with city-ordinance domestic-violence convictions, which are petty offenses. However, Solano said the ban doesn't apply to petty offenses.

The Denver Sheriff's Department is also seeking clarification from the ATF as to how the law applies to petty offenses, said John Simonet, Denver director of corrections.

He said the sheriff's department, which operates both the city and county jails and provides security in the Denver courts, has seven officers with domestic-violence violations of municipal ordinances. Another three or four deputies have similar cases pending in municipal court, he added.

Those deputies with petty-offense convictions for domestic violence already are required to leave their weapons at their duty stations at the end of their work shifts, he added.

Meantime, Deputy Aurora Police Chief Mike Stiers said that in checking internal-affairs records back to 1993, the suburban department has found five officers charged with domestic violence.

Stiers said he didn't know the outcome of those cases.

"Without going back and reading every report, I'm not sure whether it's applicable," he said.

Two of the officers are no longer on the force, he noted.

Arapahoe County Sheriff Pat Sullivan said his department would check all 360 sworn officers with the National Crime Information Center criminal history records system to see if there have been any misdemeanor convictions among the staff "that we're not aware of."

Sullivan said that as chairman of the congressional affairs committee of the National Sheriffs Association, he would fax information on the new law to sheriffs in Colorado, as well as mail a packet to 3,000 sheriffs nationwide.

"We would have to look at it on a case-by-case basis," said Deputy Jim Parr, spokesman for the Jefferson County Sheriff's Department, "and if the law applied to a particular situation, we would be bound by it."

"We're going to take a look at it," said Janet Young, legal adviser to the Lakewood Police Department. "We'll get a copy of the actual bill and decide what our policy is going to be."

JUSTICE

# One Strike and You're Out

If you've been convicted of domestic violence, you can't have a gun. Even, it turns out, if you're a cop.

BY LARRY REIBSTEIN  
AND JOHN ENGEN

**S**HOULD PEOPLE CONVICTED OF beating their spouses or children be allowed to own a gun? Congress answered that this year: no. But suppose that incident happened years ago—and the someone is a cop or a soldier or an FBI agent whose livelihood essentially depends on carrying a gun? Still no?

This is no theoretical debate. A new federal law, slipped unobtrusively into a spending bill in September, says that anyone convicted of even a misdemeanor in a domestic-violence incident—ever—is prohibited from owning, carrying or transporting a gun. The law was widely praised then as a quick and easy way to curb an escalation of violent acts against wives and children—and if a cop got caught up, so be it. It also plugged a legal loophole; while felons were already barred from owning guns, most domestic-abuse cases are prosecuted as misdemeanors.

But so far, just about the only people giving up their guns are the cops. A dozen or so officers, in cities including Los Angeles, Denver and Detroit, have turned in their guns and been demoted to desk jobs—or told they might be fired. In Minneapolis four officers, two of them highly decorated, have been reassigned to desk duty or put on paid leave. "If you can't carry a gun you can't be a cop," said Police Chief Robert Olson. Denver's sheriff's department came up with a skirt-the-issue solution: it asks deputies with a misdemeanor record to hand in their guns before going home.

How many law-enforcement officers might be affected? There are about 700,000 at the federal, state and local levels, so it could reach into the thousands. In recent weeks law-enforcement agencies have scrambled to search their personnel records for convicted officers, though it's not always useful; some states don't list misdemeanors on rap sheets. The Justice Department is relying on the honor system. It has asked all employees who carry firearms, including

FBI and Drug Enforcement Administration agents, to declare in writing that they've never been convicted of a misdemeanor involving domestic abuse—or to turn in their weapons. The Pentagon admits it's not in compliance while it drafts new regulations. How many soldiers might be past abusers is anyone's guess.

Many law-enforcement agencies general-

to be held to a high standard. As The Denver Post editorialized, "Police officers who are guilty of domestic violence should lose the right to practice in a profession where the ability to make cool and clear decisions ... is absolutely critical."

Opponents also attack the law's retroactive reach. Some police-union lawyers say it may violate the Constitution's prohibition against ex post facto laws—in this case, increasing the punishment for a crime committed before the new law was passed. It also allows no room for changed behavior. In Minneapolis, two of the cops now on leave were convicted of misdemeanors more than a decade ago. And, according to their union, the offenses involved shouting matches, not physical violence. All four cops (who weren't identified) disclosed the misdemeanors on their own. Chief Olson, while



**'The ability to make cool and clear decisions':** Lots of police officers may end up sitting behind a desk under the new federal law. Above, police respond to a domestic dispute.

ly support the law. But not surprisingly, police organizations and unions aren't happy. They are complaining that the law is unenforceable and may be unconstitutional. Says Los Angeles County Sheriff Sherman Block, "This takes away the police officer's ability to make a living."

Up to now most gun-control laws, including the Brady bill requiring registration, have exempted police. They are, after all, trained law-enforcement officers. Police unions argue that under the new law civilians can still go about their jobs even if they must give up their guns. "It is patently unfair to police officers," said Beth Weaver, a spokeswoman for the National Association of Police Organizations. Still, supporters reasonably argue that cops especially need

supporting the law, says it needs to be sympathetic to someone "who, 20 years ago, made a mistake."

Such comments may sound distressingly familiar to domestic-abuse counselors, but they may yet get a sympathetic hearing in Congress. Several House members suggested that the Clinton administration misinterpreted the retroactivity provision, and are calling for making the law apply only to new cases of domestic abuse. The administration, however, is opposed to any changes, fearing it would remove any teeth and allow all past abusers—not just cops—free to own a gun. Given the new importance placed on reducing domestic violence, that's a risk it would rather not take.

With BRAD STONE in Chicago



PAPER

ATC

DATE

11/2/77

FILE

## Police job on line under new gun law

By Craig Schnelder  
and Scott Marshall  
STAFF WRITERS

A 10-year veteran of the Alpharetta police force has surrendered his gun and may lose his job as police departments across metro Atlanta address a new law taking guns out of the hands of people convicted of domestic abuse.

The action marks the first reported instance in the metro area of an officer being taken off the street because of the controversial federal law.

The law, approved Sept. 30, prohibits gun use by people convicted of any crimes of domestic abuse, including misdemeanors such as simple assault or harassment.

The state attorney general's office has interpreted that to mean no person convicted of misdemeanor domestic violence can be certified as a police officer.

Although some police departments across the nation have interpreted the law to mean officers may carry their guns on the job but not off duty, the federal Bureau of Alcohol, Tobacco and Firearms (ATF) says an officer convicted of a domestic abuse crime cannot possess a gun "for any purpose."

The Alpharetta police officer had pleaded guilty in the mid-1980s to a misdemeanor charge during his divorce, said Alpharetta Police Chief Buz Dillon.

The officer, who Dillon refused to identify, has been placed on desk duty for 90 days, during which Dillon hopes Congress will clarify the law. If the law stands as interpreted by the ATF, the police officer will lose his job, the police chief said.

Dillon criticized the law for making an officer pay a second time for an incident in his past. But the chief said he had no choice but to take action.

On Tuesday, the state agency that screens candidates for police academies said it will disqualify any person convicted of domestic abuse, even a misdemeanor. Moreover, the agency, called the Georgia Peace Officer Standards and Training Council (POST), will take away the certification for any police officer it learns has a history of domestic abuse convictions, said investigations director Eric Dierks.

But the task of checking whether a police officer is a spouse abuser lies with local departments, he said.

Police departments in Fayette, Fulton, Coweta, Rockdale, Clayton, Henry and Walton counties and Peachtree City and Covington said Tuesday they had no officers affected by the new law. The Atlanta Police Department is awaiting a legal opinion on the law before taking any action, a spokesman said.

# Officer gets gun back, returns to work after court ruling

By Chris Graves  
Star Tribune Staff Writer

A little-known Minnesota court rule paved the way for Minneapolis police Lt. Dale Barsness to get his gun — and his job — back.

The head of the homicide unit had been forced to comply with a new federal law that says anyone who has ever been convicted of misdemeanor domestic violence can no longer carry a firearm. Without a gun, Barsness could not be a police officer in the state.

But a section of the state's Rules of Criminal Procedure allowed a Hennepin County judge to avoid a "manifest injustice" by setting aside Barsness' guilty plea to fifth-degree domestic assault against his wife in 1991.

Barsness was one of five Minneapolis officers who had to turn their weapons over to the internal affairs unit Dec. 12. Four of the five, including Barsness, have gotten their guns back and have returned to work. The status of the fifth was unclear Monday.

"It's good to be back," Barsness said, noting the three weeks' worth of work on his desk.

Turn to BARSNESS on B2 for:  
— Bill to cancel retroactivity may be introduced this month.

Tuesday  
JANUARY 7, 1997

## Metro/State

B  
SECTION

Star Tribune

### BARSNESS from B1

## 'Manifest injustice' rule cited in decision to return cop's gun

Nationwide, the federal gun-law amendment has created consternation among police officers, military personnel and hunters.

Many have argued that it retroactively changed the legal consequences of a crime and is therefore unconstitutional.

U.S. Rep. Bob Barr, R-Ga., is drafting a bill to keep the law from being applied to cases before Sept. 30, 1996. It may be presented to Congress this month. It is not expected to be introduced in the three-day session starting today.

Last Friday, Hennepin County District Judge John Stanoch ruled that Barsness could avoid the consequences of the federal law by withdrawing the plea he entered the day after assaulting his wife at

their Brooklyn Center home.

A judge in Minnesota can allow someone to withdraw a guilty plea if extraordinary circumstances that surface later would create a "manifest injustice." The rule has usually been used when DNA tests show that a person who pleaded guilty to a crime could not have committed it.

Barsness' attorney, Michael Friedberg, said Monday that he was not aware of the rule until he started researching Barsness' case and that of another Minneapolis officer.

"The net effect will be that the plea was never entered," Friedberg said Monday. "But that's not the message Dale wants to get out. He said, and has said, what he did was wrong."

Police have not released the

names of the other four officers or complete details about the outcome of their cases. The department discovered that the federal law didn't apply to one officer who turned in his gun. Another is attempting to have his domestic-violence conviction expunged from his record. Like Barsness, another officer had his guilty plea set aside.

Bill McClelland, Brooklyn Center prosecuting attorney, said he didn't object to the tactic in Barsness' case because it seemed to fit the criteria.

"I don't see Barsness as a danger to society," McClelland said. If he lost his job because of the federal law, "Minneapolis would lose a valuable employee, and his family would suffer because of loss of income."

Barsness has said he pays his wife \$1,700 a month in support.

A memo attached to the judge's order said he granted the motion because Barsness admitted he was wrong, made no attempt to defend or justify the

abuse, completed "each and every condition of his probation" and went through anger management counseling and sought out additional counseling on his own.

While the issue of whether federal law is unconstitutional not before the Hennepin County court, the judge said it was clear Barsness could not have known years ago that the plea could jeopardize his livelihood.

"To allow that to happen to this citizen who has taken responsibility for his action, who resolved the issues leading to the assault and by all accounts served as a responsible and respected member of the community would be a manifest injustice," Stanoch said.

But he noted that Barsness' actions were still criminal:

"Domestic violence is a serious societal problem, and this decision should not be taken as minimizing the actions of Barsness in 1991. His assault was wrong."

# **EXHIBIT 7**

# City of Cincinnati



Interdepartmental  
Correspondence Sheet

Date Nov. 6, 1996

To Colonel Michael C. Snowden, Police Chief

From Lieutenant Stephen R. Kramer, Planning Section

Copies to

Subject New Federal Regulations Regarding Domestic Violence and Officers' Firearms

Attached is a Planning Section rendition of revised sections 921, 922, 924, 925, and 926 of the United States Code as amended by House Bill 3355 in 1995 and House Bill 3610 in 1996. Both of these bills were signed into law. The latter one went into effect on September 30, 1996. The following is based on opinions based on same. These opinions were not made with benefit of legal counsel.

A Cincinnati Police Officer cannot possess a firearm, even a Division issued firearm, if the officer has been convicted of a misdemeanor domestic violence. A misdemeanor domestic violence is defined as a misdemeanor statute which includes the use or attempted use of physical force or the threatened use of a deadly weapon. It also includes those offenses committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.

Officers who are found guilty of misdemeanor violence by virtue of threats of physical force are not included in these provisions. Nor do these provisions appear to cover all the relationships that are covered in Ohio law.

Planning Section researched a similar project in February 1995. At that time, it was decided that police officers were exempted from Section 922 due to an expressed exemption in Section 925 (see attached solicitor's opinion). That exemption was specifically eliminated for purposes of convictions for misdemeanor domestic violence. The exemption still stands for those who are subjects of court orders as a result of and/or under indictment for domestic violence.

Once convicted of a misdemeanor domestic violence, there are two ways an officer can be issued a firearm:

1. The officer is not considered to be convicted if the conviction is expunged or set aside, or if the offense is one for which he/she has been pardoned or had his/her civil rights fully restored.
2. The officer can make application to the Secretary of the Treasury for relief from the disability. The Secretary may grant such relief if it is established to his satisfaction that the circumstances regarding the disability, and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest.

Since these are most likely to be initiated by the officer or his/her counsel, we did not inquire as to administrative processes.

# DRAFT

Mr. Dale Cayot, Chief Counsel the local office of the Bureau of Alcohol, Tobacco, and Firearms (BATF), does not have a copy of the law. However, they were issued a brief from the Department of Justice (DOJ). Based on the brief, it is also his opinion that there is no longer an exemption for a police officer if convicted of misdemeanor domestic violence. The only question appears to be the interpretation of the definition of "misdemeanor domestic violence." It is Mr. Cayot's opinion that the DOJ will interpret it to mean that a threatened use of a deadly weapon or the actual use or attempted use of force will be required to invoke the new Federal regulations regarding possessions of firearms by officers. Mr. Cayot will contact this office when the interpretation is rendered.

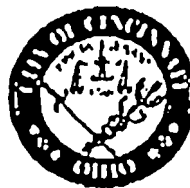
Planning Section requests your permission to ask the City Solicitor to review the new federal regulations and provide an opinion as to our responsibilities with respect to issuing firearms to officers convicted of Domestic Violence. We further recommend that, if there are currently any officers who, in the knowledge of the Division, have been convicted of Domestic Violence, and if that conviction involved allegations of force, attempted force, or threat of use of a deadly weapon, that those officers be relieved of their firearms until such opinion is received.

Planning Section will complete the request in anticipation of your approval. Upon approval, Planning Section will fax the request to the Solicitor and ask for an expedited response.

SRK/sk

**DRAFT**

## City of Cincinnati

Interdepartmental  
Correspondence SheetDate Nov. 7, 1996

To Colonel Michael C. Snowden, Police Chief

From Lieutenant Stephen R. Kramer, Planning Section

Copies to Fay D. Dupuis, City Solicitor

Subject Update - Domestic Violence, Police Officers, and Firearms

In a Form 17 completed to you yesterday we advised that Chief Counsel of the local Bureau of Alcohol, Tobacco, and Firearms (BATF) office, Dale Cayot, would call us with opinions when they were sent to him from the Department of Justice (DOJ). Coincidentally, many of the opinions we were looking for came to him this morning and are approved for oral, not written, dissemination.

"Misdemeanor domestic violence" means any misdemeanor conviction where one of the actions during the offense included the use of force, attempted use of force, or threatened use of a deadly weapon against any person whose relationship to the perpetrator is defined in the new Federal law. This includes misdemeanor charges of violations of State statutes wherein the above actions were taken by the perpetrator against the above mentioned class of victim, e.g., Assault, Aggravated Menacing, etc.

There is no exemption for police officers if convicted of the above offenses with the above stipulations, regardless of when it occurred. The law is clear that the subject officer may not have in his/her possession any firearm. It is suggested by BATF that officers pass their firearms to a third party, be it an attorney, local police agency, family member, or the BATF.

There is no relief other than those mentioned in yesterday's report. The only practical relief is by expungement or set aside of the conviction or a full pardon. The option to apply to the Secretary of the Treasury is not practical because the Secretary of Treasury is barred, by an appropriations statute, from processing any such applications except those submitted by corporations.

Section 925 of the United States Code (USC) does effectively provide an exemption to police officers regarding all other violations, court orders, indictments, convictions, etc. As a macabre aside, if the police officer uses a firearm to shoot his wife, that firearm is not subject to seizure under Federal law because it would be a *felony* domestic violence and the officer remains exempt under USC Section 925. But if tries to slap her, his firearms are subject to seizure.

Planning Section's recommendation for pulling Division-owned firearms from affected personnel still stands and is reinforced. BATF will make near-future cases against police officers and agencies a low priority - an unofficial grace period of sorts. However, the civil liability potential, even in a "good" shooting, is probably extraordinary, especially to the policy maker, i.e., Police Chief.

SRK/sk

**DRAFT**

# **EXHIBIT 8**

|             |                                           |           |
|-------------|-------------------------------------------|-----------|
| 112.9m..... | Drug interdiction.....                    | 172B      |
| 63m.....    | Watershed and flood<br>Prevention.        | Title V   |
| 25m.....    | Emergency Conservation--<br>hurricane.    | Title V   |
| 57.9m.....  | FAA security activities....               | Chapter 5 |
| 147.7m..... | Facilities and Equipment....              | Chapter 5 |
| 21m.....    | Research, Engineering and<br>Development. | Chapter 5 |
| 82m.....    | Emergency Relief--hurricane               | Chapter 5 |
| 6m.....     | NTSB--salaries.....                       | Chapter 5 |
| 1m.....     | NTSB--emergency.....                      | Chapter 5 |
| 3m.....     | Research and Special<br>Programs.         | Chapter 5 |

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\$1.757 billion in emergency designation.

Mr. MCCAIN. I yield back the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. LAUTENBERG addressed the Chair.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. I yield myself 10 minutes on this side.

The PRESIDING OFFICER. The Senator is recognized.

Mr. LAUTENBERG. Mr. President, the legislation before us includes a provision that I authored that will prohibit anyone convicted of a crime involving domestic violence from possessing firearms. I want to take a few minutes of the Senate's time to reflect on just what that means.

We are today about to perform a great and moral act that a human being can perform--one of the best. We are about to save the life of another person. Today, we are going to save the life of the ordinary American woman, a woman who loves her kids, a woman who loves her family. Today, this ordinary American woman is married to someone who is generally a decent, law-abiding guy, but with one exception. Sometimes when things get rough and the stresses of life build, he loses his temper because his emotions get the best of him. He loses control, flies into a rage and then strikes out violently at those closest to him.

Once he beat his wife brutally and was prosecuted, but like most wife beaters, he pleaded down to a misdemeanor and got away with a slap on the wrist.

Mr. President, next year, this fellow is going to lose his cool at work, or with the boys, and he is going to go home one day and get into another argument with his wife. As arguments often do, it will escalate, and this time, as before, it will get out of control. As their children huddle in fear, the anger will get physical, and almost without knowing what he is doing, with one hand he will strike his wife and with the other hand he will reach for the gun he keeps in his drawer. In an instant their world will change. And this woman, this loving mother, this ordinary American, will die or be severely wounded.

Later, maybe the husband will go to prison. The children will be left parentless, and the effects of the tragedy will ripple for years throughout their lives and throughout the lives of so many others.

Except, Mr. President, because of what we are about to do, this story is going to have a different ending.

Yes, the husband may lose his cool at work and, yes, maybe they will get into the same argument; yes, his rage will fly out of control; and yes, it will probably lead to violence. But when this man's hand reaches into that drawer, there will not be a gun there. So that fatal instant, that moment of fleeting madness, will never happen.

In the end, that ordinary American woman, that loving mother, will end up being bruised, maybe she will end up unconscious in the hospital. But when the next day comes, hopefully, she will awaken, she will see the morning Sun through her swollen eyes, and, if lucky, she will leave the hospital and get on with her life, a life to see that frightened child grow up and go to school. She will live to see him graduate, find a job, and create his own family. That will happen because--and only because--we are about to save her life this day.

Mr. President, over the years there will be thousands of women like

this, each one with a family of loved ones, each one with their own dreams. And there will be children. And they will all live, Mr. President. They will all live because of what we do here this day.

Mr. President, you and I will never know the women and children whose lives we are about to save. They will never have a chance to thank us. They will never know that their lives were spared.

But for the rest of our lives, you and I and other Senators, we will have the privilege of knowing that we have lived up to the very highest of our own ideals. We have done nothing less than reach forward into time, put our hands around tragedy and death and remolded it back into life itself. We have done that many, many times, over and over and over again.

Mr. President, this tremendous victory for the forces of life would not

[[Page S11877]]

have happened but for the hard work and dedication of many people. I want to express my deep appreciation to all of those who played a role.

In particular, I want to thank President Clinton, Leon Panetta, many dedicated men and women in the Clinton administration.

A moment ago, we saw the distinguished chairman of the Appropriations Committee, Senator Mark Hatfield, on the floor. I want to thank him. He was solidly behind our effort.

The commitment of the people I just mentioned to this cause was absolutely essential to getting this done. I am grateful to the President for that support.

I also want to thank our distinguished Democratic leader, Senator Daschle. He supported me in this effort from the beginning, from way back in the beginning of the year. His efforts in the final hours were of great help. I very much appreciate his commitment to the victims of domestic abuse and for his friendship, notwithstanding my repeated phone calls to him to discuss this legislation.

I also want to publicly thank those who work in my office and in the Senate and many others here in Washington and around the country who have helped make this possible. Over 30 national organizations got behind this effort. Many, many people made significant contributions.

I particularly am appreciative of Sarah Brady and Handgun Control for raising this issue at the Democratic convention and giving it the public attention that it required and deserved.

I want to thank the American Bar Association, whose public statement on a weaker alternative version was critical in persuading my colleagues not to try to water down the proposal. Also, the Coalition to Stop Gun Violence, who took the initiative to build support among a wide variety of other organizations, and the Violence Policy Center, the National Coalition Against Domestic Violence, the National Network Against Domestic Violence, all of whom helped sound the trumpet about this legislation.

Many other groups also played important roles.

Mr. President, for the historical record, I would like to take the opportunity to discuss some of the history behind the domestic violence gun ban, and the changes in the legislative language that are incorporated into the final agreement.

Mr. President, I originally introduced the domestic violence gun ban as S. 1632 on March 21 of this year. After extensive negotiations with the Republican leadership, including Senator Lott, Senator Craig, and Senator Hutchinson, the proposal was then modified slightly and incorporated into an antistalking bill by a voice vote. Unfortunately, the House failed to act on the antistalking bill. I then offered the modified version of the legislation as an amendment to the fiscal year 1997 Treasury, Postal Service and general Government appropriations bill, and the amendment was approved by a vote of 97 to 2. However, Senator Lott pulled the Treasury, Postal bill from the floor, and a version of that legislation has now been incorporated into this omnibus spending bill.

The language in the final agreement was worked out early Saturday morning, September 28, through further negotiations with the Republican leadership. Initially, opponents of my legislation had proposed to gut the legislation, primarily by inserting three major loopholes. First,

they proposed to exclude child abusers from the ban, by limiting its application only to crimes against intimate partners. This outrageous proposal was withdrawn once it was held up to public scrutiny.

Second, opponents of the gun ban proposed to limit the ban only to offenders who had been notified of the ban when they originally were charged. This effectively would have exempted all currently convicted offenders from the ban. It also would have meant that most offenders in the future would escape the ban, since there was no requirement that they actually be notified. In effect, gun ban opponents wanted to say that ignorance of the law would be an excuse for wife beaters, even though it is not an excuse for anybody else. Eventually, this proposal, too, was dropped.

The third major loophole proposed by gun ban opponents was to limit the ban only to offenders who had been entitled to a jury trial. This would have rendered the ban close to meaningless, as the vast majority of these cases are heard before a judge, in a bench trial.

Those who proposed this new loophole eventually agreed to drop it entirely. Therefore, the ban will apply to all wife beaters and all child abusers, regardless of whether they were convicted in a trial heard by a judge or a jury.

Mr. President, after agreeing to drop the jury trial requirement, opponents of a strong gun ban continued to express concern that gun rights should not be lost without an assurance that offenders will be provided with all appropriate due process protections. To reassure them on this point, we agreed to include in the final agreement a provision that has no real substantive effect, but that may help to assure some people that nobody will lose their ability to possess a gun because of a flawed trial. This provision, in essence, states that the ban will not apply to someone who was wrongly denied the right to a jury trial. More specifically, the language protects from the ban anyone who had been entitled to a jury trial, but who did not receive such a jury trial, or who did not knowingly and intelligently waive his right to a jury trial.

Of course, Mr. President, if an offender was wrongly denied the right to a jury trial, he was not legally convicted. And so this language really does not change anything. But, again, as it provided needed reassurance to some, I agreed to it in order to facilitate the final agreement.

I do want to make very clear, however, that this language should not be interpreted to indirectly include any requirement of notice for a waiver to be considered to have been made knowingly and intelligently. That is, one can plead guilty or otherwise effectively waive one's constitutional right to a jury trial, and in considering the validity of such a waiver it is irrelevant whether the individual knew that a conviction will lead to a firearm ban. Although that should be clear from the face of the statute, given opponents' efforts to seek a notice requirement, I wanted to state this definitively for the record. This point was made very explicitly in the negotiations, and was agreed to by all sides.

Mr. President, the final agreement does include some minor changes to the Senate-passed version that actually strengthen the ban slightly. Let me review some of them now.

First, the revised language includes a new definition of the crimes for which the gun ban will be imposed. Under the original version, these were defined as crimes of violence against certain individuals, essentially family members. Some argued that the term crime of violence was too broad, and could be interpreted to include an act such as cutting up a credit card with a pair of scissors. Although this concern seemed far-fetched to me, I did agree to a new definition of covered crimes that is more precise, and probably broader.

Under the final agreement, the ban applies to crimes that have, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon. This is an improvement over the earlier version, which did not explicitly include within the ban crimes involving an attempt to use force, or the threatened use of a weapon, if such an attempt or threat did not also involve actual physical violence. In my view, anyone who attempts or threatens violence against

and should be prohibited from possessing firearms.

Mr. President, another new provision in the final agreement clarifies that a conviction will not lead to a firearm disability if the conviction has been expunged or set aside, or is for an offense for which the person has been pardoned or has had civil rights restored. This language mirrors similar language in current law that applies to those convicted of felonies.

I would note that the language on civil rights restoration, as it has been applied in the past, and as it should be interpreted in the future, refers only to major civil rights, such as the right to vote, to hold public office, and to serve on a jury. Loss of these rights generally does not flow from a misdemeanor conviction, and so this language is probably irrelevant to most, if

[[Page S11878]]

not all, of those offenders covered because of the new ban. But I want to make it clear that the restoration of any firearm rights under state law would not amount to a civil rights restoration for these purposes. In fact, any such State law effectively would be preempted by this language, and so could not have any legal effect.

Mr. President, I now want to take a moment to briefly discuss the implementation of this new law.

Mr. President, the final agreement does not merely make it against the law for someone convicted of a misdemeanor crime of domestic violence from possessing firearms. It also incorporates this new category of offenders into the Brady law, which provides for a waiting period for handgun purchases. Under the Brady law, local law enforcement authorities are required to make reasonable efforts to ensure that those who are seeking to purchase a handgun are not prohibited under Federal law from doing so.

Mr. President, convictions for domestic violence-related crimes often are for crimes, such as assault, that are not explicitly identified as related to domestic violence. Therefore, it will not always be possible for law enforcement authorities to determine from the face of someone's criminal record whether a particular misdemeanor conviction involves domestic violence, as defined in the new law.

Mr. President, I would strongly urge law enforcement authorities to thoroughly investigate misdemeanor convictions on an applicant's criminal record to ensure that none involves domestic violence, before allowing the sale of a handgun. After all, for many battered women and abused children, whether their abuser gets access to a gun will be nothing short of a matter of life and death. I am hopeful that law enforcement officials always will keep that in mind as they implement this requirement.

Having said this, Mr. President, I recognize that there are limits to the ability of many law enforcement agencies to conduct in depth investigations of large numbers of applicants for handgun purchases. The law requires that these agencies make a reasonable effort to investigate applicants. What is a reasonable effort depends upon the local law enforcement officials' available time, resources, access to records, and their own law enforcement priorities.

In my view, the reasonable effort requirement should not be interpreted so broadly that it would substantially interfere with the ability of a law enforcement agency to carry out its central mission of apprehending criminals and protecting the public from crime. At the same time, it should not be interpreted so narrowly that it would allow law enforcement agencies to routinely ignore misdemeanor convictions for violent crimes, without further exploration into whether these crimes involved domestic violence. So long as an agency makes a reasonable effort to do so, the requirements of the law would be met. However, again, I would strongly urge law enforcement officials to make this a top priority.

Finally, Mr. President, I want to acknowledge some of the many people who have played a role in moving this legislation forward.

As I noted earlier, I am especially grateful to President Clinton for his strong support of this initiative, which was absolutely essential

to its enactment.

I also want to again thank many of the organizations and people who have supported the effort. In addition to those I mentioned earlier, these include the American Academy of Pediatrics; Children's Defense Fund; Consumer Federation of America; Family Violence Prevention Fund; the National Center on Women and Family Law; the Center for Women Policy Studies; American Ethical Union; Church of the Brethren; American Friends Service Committee; Friends Committee on National Legislation; Lutheran Office for Governmental Affairs; American Public Health Association; American Jewish Committee; AYUDA; Church Women United; Congress of National Black Churches; Evangelical Lutheran Church in America; YWCA of the USA; United Methodist Church, General Board of Church and Society; Peace Action, National Clearinghouse for the Defense of Battered Women, National Urban League; NOW; National Council of Jewish Women; Pennsylvania Coalition Against Domestic Violence; Physicians for Social Responsibility; Presbyterian Church USA; Union of American Hebrew Congregations; Unitarian Universalists Association; United Church of Christ; and Justice for Kids.

In conclusion, Mr. President, I believe that this legislation will save the lives of many battered wives and abused children. And it will send a message that, as a nation, we are determined to take the problem of domestic violence seriously.

Mr. President, getting this legislation enacted has been a long and very difficult struggle. We had to overcome intense opposition from one of the most powerful special interests in American politics. We have overcome one roadblock after the next, and there have been several times when I did not think we would make it.

But throughout it all, the supporters of this bill have always kept in mind that we were fighting for literally a matter of life and death. That knowledge has helped sustain us and make us that much more determined as we have worked our way through the legislative minefield.

So, in the end, we have a glorious victory, a victory for America's frightened, battered women, a victory for our abused children, a victory of life over death.

I am honored and humbled to have been able to play a part in this legislation. We hope that the enforcement of the law will be as rigid as the law very simply defines it. If you beat your wife, if you beat your child, if you abuse your family and you are convicted, even of a misdemeanor, you have no right to possess a gun. That is the way it ought to be. Lord willing, it will be. I yield the floor.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. DOMENICI. Mr. President, I ask unanimous consent that I be permitted to speak for 4 minutes and Senator Helms be permitted to speak for 4 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOMENICI. I may not use all of my time.

Mr. President, first, I want to say this is not a pretty bill. There are plenty of reasons to be against it. But there are far more reasons to be for it, not the least of which is the fact that this bill will close out the appropriations for the year and the Government of the United States will continue to operate for the next 12 months.

Having said that, I think there are a couple of people we should thank: First of all, the chairman of the full committee, Senator Mark Hatfield, for his hard work, long hours, and diligent insistence on getting this done. To our distinguished majority leader, who, in a short time as leader, has understood these processes better than most of us who have been here a long time. Indeed, he did what most of us thought was the right thing to do, and he got right in the middle of it and got this job done. My compliments go out to him.

Mr. President, I have commented here on the floor and included an amendment heretofore in the foreign operations appropriations bill with reference to the drugs that are coming across the southwest border. I have not been very congenial with the Mexican Government because I believe they are not doing everything they can to prosecute the drug kingpins residing in Mexico. I think these kingpins are going to bring Mexico's Government to a standstill in the very near future.

So, to make sure that the United States is doing its share with respect to the southwest border, where 70 percent of the cocaine comes

# **EXHIBIT 9**

CONSTITUTION AND BY-LAWS

OF THE

# FRATERNAL ORDER OF POLICE

A NATIONAL POLICE ORGANIZATION



NATIONAL HEADQUARTERS  
1410 DONELSON PIKE, A-17  
NASHVILLE, TENNESSEE 37217

REVISED AT THE  
52ND BIENNIAL CONFERENCE  
JULY 31 - AUGUST 3, 1995  
VIRGINIA BEACH, VIRGINIA

GILBERT G. GALLEGOS  
NATIONAL PRESIDENT

JERRY W. ATNIP  
NATIONAL SECRETARY

## CONSTITUTION

|            |                                                     |    |
|------------|-----------------------------------------------------|----|
|            | Preamble .....                                      | 1  |
| ARTICLE 1  | Name .....                                          | 2  |
| ARTICLE 2  | Character .....                                     | 2  |
| ARTICLE 3  | Definitions .....                                   | 3  |
| ARTICLE 4  | Membership .....                                    | 4  |
| ARTICLE 5  | Organization .....                                  | 5  |
| ARTICLE 6  | National Officers .....                             | 6  |
| ARTICLE 7  | National Executive Board .....                      | 7  |
| ARTICLE 8  | National Board of Trustees .....                    | 8  |
| ARTICLE 9  | National President .....                            | 9  |
| ARTICLE 10 | Immediate Past National President .....             | 10 |
| ARTICLE 11 | National Vice President .....                       | 10 |
| ARTICLE 12 | National Secretary .....                            | 11 |
| ARTICLE 13 | National Treasurer .....                            | 12 |
| ARTICLE 14 | National Second Vice President .....                | 13 |
| ARTICLE 15 | National Sergeant at Arms .....                     | 13 |
| ARTICLE 16 | National Trustee .....                              | 14 |
| ARTICLE 17 | Delegates .....                                     | 14 |
| ARTICLE 18 | General Counsel .....                               | 16 |
| ARTICLE 19 | State and Subordinate Lodges .....                  | 16 |
| ARTICLE 20 | Associate Lodges .....                              | 19 |
| ARTICLE 21 | Auxiliaries .....                                   | 19 |
| ARTICLE 22 | International Affiliate Lodges and Membership ..... | 20 |
| ARTICLE 23 | Discipline .....                                    | 20 |
| ARTICLE 24 | Legal Aid .....                                     | 25 |
| ARTICLE 25 | Resolutions .....                                   | 26 |
| ARTICLE 26 | Official Journal .....                              | 26 |
| ARTICLE 27 | Official Order of Business .....                    | 26 |
| ARTICLE 28 | Parliamentary Procedure .....                       | 27 |
| ARTICLE 29 | Official Ritual .....                               | 27 |
| ARTICLE 30 | Constitutional Amendments .....                     | 27 |
| ARTICLE 31 | Dues, Assessment and Administrative Fees .....      | 28 |

## BY-LAWS

|            |                                                                |    |
|------------|----------------------------------------------------------------|----|
| ARTICLE 1  | Name and Insignia .....                                        | 30 |
| ARTICLE 2  | Character .....                                                | 30 |
| ARTICLE 3  | [RESERVED] .....                                               | 30 |
| ARTICLE 4  | [RESERVED] .....                                               | 30 |
| ARTICLE 5  | Organization .....                                             | 31 |
| ARTICLE 6  | National Officers .....                                        | 33 |
| ARTICLE 7  | National Executive Board .....                                 | 33 |
| ARTICLE 8  | National Trustees .....                                        | 33 |
| ARTICLE 9  | National President .....                                       | 34 |
| ARTICLE 10 | Past National Presidents .....                                 | 34 |
| ARTICLE 11 | National Vice President .....                                  | 35 |
| ARTICLE 12 | National Secretary .....                                       | 35 |
| ARTICLE 13 | National Treasurer .....                                       | 35 |
| ARTICLE 14 | National Second Vice President .....                           | 36 |
| ARTICLE 15 | National Sergeant at Arms .....                                | 36 |
| ARTICLE 16 | National Trustee .....                                         | 36 |
| ARTICLE 17 | Delegates [RESERVED] .....                                     | 36 |
| ARTICLE 18 | General Counsel .....                                          | 37 |
| ARTICLE 19 | State and Subordinate Lodges .....                             | 37 |
| ARTICLE 20 | Associate Lodges [RESERVED] .....                              | 37 |
| ARTICLE 21 | Auxiliaries [RESERVED] .....                                   | 37 |
| ARTICLE 22 | International Affiliate Lodges and Membership [RESERVED] ..... | 37 |
| ARTICLE 23 | Discipline and Hearings .....                                  | 37 |
| ARTICLE 24 | Legal Aid .....                                                | 39 |
| ARTICLE 25 | Resolutions .....                                              | 40 |
| ARTICLE 26 | Official Journal .....                                         | 40 |
| ARTICLE 27 | Official Order of Business [RESERVED] .....                    | 40 |
| ARTICLE 28 | Parliamentary Procedure [RESERVED] .....                       | 40 |
| ARTICLE 29 | Annual Budget .....                                            | 40 |
| ARTICLE 30 | By-law Amendments .....                                        | 41 |
| ARTICLE 31 | Dues, Assessments, and Administrative Fees .....               | 42 |

# CONSTITUTION

## Preamble

we, the law enforcement officers of the United States and of the several states and political divisions thereof, as representatives and delegates of state and subordinate lodges, do hereby associate the several lodges we represent and the members thereof for the following purposes:

*To support and defend the Constitution of the United States; to inculcate loyalty and allegiance to the United States of America; to promote and foster the enforcement of law and order; to improve the individual and collective proficiency of our members in the performance of their duties; to encourage fraternal, educational, charitable and social activities among law enforcement officers; to advocate and strive for uniform application of the civil service merit system for appointment and promotion; to support the improvement of the standard of living and working conditions of the law enforcement profession through every legal and ethical means available; to create and maintain tradition of esprit de corps insuring fidelity to duty under all conditions and circumstances; to cultivate a spirit of fraternalism and mutual helpfulness among our members and the people we serve; to increase the efficiency of the law enforcement profession and thus more firmly to establish the confidence of the public in the service dedicated to the protection of life and property.*

All terms used herein to denominate gender shall be generic and, whenever appropriate, the singular shall include the plural and the plural shall include the singular.

### ARTICLE 3

#### Definitions

Section 1. As used herein, the following terms, phrases or words shall be defined as follows:

A. "Elected law enforcement officer" shall mean for purposes hereof any law enforcement officer who meets the qualifications in Article 4, Section 1, or who by law is exempted from meeting the minimum training standards.

B. "Full-time employed" shall mean law enforcement officers that are engaged in such employment as their full-time occupation.

C. "Good Cause" shall mean nonfeasance, malfeasance, dishonesty, or refusal to carry out the will of the Biennial Conference.

D. "Lodge in good standing" shall mean a lodge which is not greater than thirty (30) days in arrears in the payment of all dues, delinquency fees and assessments due and payable to or for the Grand Lodge on behalf of its members. Any lodge in arrears of payment of dues or assessments more than thirty (30) days and less than ninety (90) days shall be deemed to be delinquent and not in good standing. Any lodge in arrears of payment of dues or assessments more than eighty-nine (89) days shall be and is hereby automatically suspended from membership in good standing in the Fraternal Order of Police.

E. "Member in good standing" in respect to the Grand Lodge, shall mean a member who fulfilled all requirements of membership in good standing in his respective subordinate and state lodges and for whom appropriate per capita tax has been paid to the Grand Lodge. Any member belonging to a state or subordinate lodge that is delinquent or has been suspended shall not be a member in good standing.

F. "National Board of Trustees" shall refer to the collective body consisting of the National President, each of the Past National Presidents, the National Vice President, the National Secretary, the National Treasurer, the National Second Vice President, the National Sergeant at Arms, each National Trustee and the Chairman of the National Trustees.

G. "National Executive Board" shall mean and consist of the National President, National Vice President, National Secretary, National Treasurer, National Second Vice President, National Sergeant at Arms and the Chairman of the National Trustees.

H. "National Trustees" shall mean the individual elected National Trustees or the collective body thereof (excluding the National Executive Board) who may meet from time to time as provided in Article 8 and Article 16 of this Constitution.

I. "Past National President" shall be defined as any person elected to the office of National President by a Biennial Conference and who served not less than one (1) full term and was not removed from office.

J. **"Regularly appointed law enforcement officer"** shall mean, for purposes hereof, any law enforcement officer who meets the minimum standards, has received the training and education required by the United States, the state, the political subdivision or agency by which they are appointed, and is granted arrest powers.

## **ARTICLE 4**

### **Membership**

**Section 1.** Any regularly appointed or elected and full-time employed law enforcement officer of the United States, any state or political subdivision thereof, or any agency may be eligible for membership in the Fraternal Order of Police, subject to the provisions of this Constitution. No person shall be denied membership on account of race, religion, color, creed, sex, age or national origin.

**Section 2.** Subject only to the provisions of this Constitution, each state and subordinate lodge shall be the judge of its membership. Each state and subordinate lodge shall establish requirements for membership in good standing of its respective membership, which requirements shall not be inconsistent herewith.

**Section 3.** There shall be three (3) classes of membership: Active, Retired and Honorary.

**A. Active Membership**

1. Shall include regularly appointed or elected full-time law enforcement officers.

2. May include retired regularly appointed or elected law enforcement officers.

3. May include, subject to the approval of his state and subordinate lodges, regularly appointed or elected law enforcement officers who have resigned from their law enforcement duties and who have remained in good standing with their state and subordinate lodges.

4. Only active members, as herein defined, shall have voice and vote.

**B. Retired Membership** shall be comprised of retired regularly appointed or elected law enforcement officers who withdraw from active membership upon or after retirement from their law enforcement agency.

**C. Honorary Membership** shall be comprised of individuals recognized by the Grand Lodge, state lodge or subordinate lodges for exceptional service or contribution to the nation, the state, political subdivision, the law enforcement community or the Fraternal Order of Police.

**Section 4.** No person shall be a member of more than one state or subordinate lodge at

# **EXHIBIT 10**



DIRECTOR

DEPARTMENT OF THE TREASURY  
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS  
WASHINGTON, D.C. 20226

OPEN LETTER TO ALL FEDERAL FIREARMS LICENSEES

The purpose of this letter is to provide you with information on the provisions of the recently enacted Omnibus Consolidated Appropriations Act of 1997 (the Act). This legislation made two amendments to the Gun Control Act of 1968 (GCA) that directly affect Federal firearms licensees. The amendments were effective on the date of enactment, September 30, 1996.

The following is a description of those two amendments of concern to Federal firearms licensees. Regulations explaining the requirements will be published shortly.

Sales of curio or relic firearms

The Act amended 18 U.S.C. § 923(j) to allow Federal firearms licensees to sell curio or relic firearms to other licensees away from their licensed premises. This amendment applies only to firearms that are classified as a curio or relic. Federal regulations define the term "curios or relics" as firearms that are of special interest to collectors by reason of some quality other than is associated with firearms intended for sporting use or as offensive or defensive weapons. To be recognized as curios or relics, firearms must fall within one of the following categories:

- (1) Firearms which were manufactured at least 50 years prior to the current date, but not including replicas thereof;
- (2) Firearms which are certified by the curator of a municipal, State, or Federal museum which exhibits firearms to be curios or relics of museum interest; or
- (3) Any other firearms which derive a substantial part of their monetary value from the fact that they are novel, rare, bizarre, or because of their association with some historical figure, period, or event. Proof of qualification of a particular firearm under this category may be established by evidence of present value and evidence that like firearms are not available except as collector's items, or that the value of like firearms available in ordinary commercial channels is substantially less.

- 2 -

Licensees are still subject to all recordkeeping requirements in the regulations concerning their sale of curios or relics. In addition, it is suggested that licensees selling a curio or relic firearm away from their licensed premises indicate in their acquisition/disposition record where the sale took place.

Persons convicted of a misdemeanor crime of domestic violence

The Act also amended the GCA to make it unlawful for any person convicted of a "misdemeanor crime of domestic violence" to ship, transport, possess, or receive firearms or ammunition. It also made it unlawful for any person to sell or otherwise dispose of firearms or ammunition to any recipient knowing or having reasonable cause to believe that the person has been convicted of such a misdemeanor.

As defined in the GCA, a "misdemeanor crime of domestic violence" means an offense that:

- (1) is a misdemeanor under Federal or State law; and
- (2) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.

This definition includes all misdemeanors that involve the use or attempted use of physical force (e.g., simple assault, assault and battery), if the offense is committed by one of the defined parties. This is true whether or not the State statute or local ordinance specifically defines the offense as a domestic violence misdemeanor. For example, a person convicted of misdemeanor assault against his or her spouse would be prohibited from receiving or possessing firearms or ammunition. Moreover, the prohibition applies to persons convicted of such misdemeanors at any time, even if the conviction occurred prior to the new law's effective date, September 30, 1996. As of the effective date of the new law, such a person may no longer possess a firearm or ammunition. However, a conviction would not be disabling if it has been expunged, set-aside, pardoned or the person has had his or her civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense) AND the person is not otherwise prohibited from possessing firearms or ammunition.

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The Act also amended the GCA so that employees of government agencies convicted of a qualifying misdemeanor would not be exempt from this new disability with respect to their receipt or possession of firearms or ammunition. Thus, law enforcement officers and other government officials who have been convicted of a qualifying misdemeanor will not be able to lawfully possess or receive firearms or ammunition for any purpose including performing their official duties. This disability applies to firearms and ammunition issued by government agencies, firearms and ammunition purchased by officials for use in performing their official duties, and personal firearms and ammunition possessed by such officials.

We are in the process of revising all applicable forms to reflect this new provision. These will be provided to you as soon as possible. In the meantime, you should inquire of your customers whether they have been convicted of a disqualifying domestic violence misdemeanor and avoid any firearm or ammunition transfers to such persons.

If you have any questions concerning these new requirements, contact your local ATF office or the Firearms and Explosives Regulatory Division at (202) 927-8300.

  
John W. Magaw  
Director

# Brady Law ruling could threaten anti-abuse law

By Gary Fields  
USA TODAY

WASHINGTON — A Supreme Court decision last week against a key provision of the 1994 Brady gun control law could have its greatest impact on another law, designed to disarm people convicted of domestic violence.

In a 5-4 decision Friday justices said the federal gun law violated the 10th Amendment of the U.S. Constitution by ordering local law enforcement officers to check the backgrounds of prospective gun purchasers.

The 10th Amendment gives states all powers that are not specifically given to the federal government by the Constitution. The court ruled that Congress went too far in passing a law that required local law enforcement to carry out a federal mandate.

Experts say that's the same argument law enforcement groups are using to challenge a 1996 law that says anyone convicted of domestic abuse cannot legally own a handgun.

Police say that unfairly punishes officers convicted of abuse by endangering their jobs, which usually require them to be armed.

"While we regret the Supreme Court action on the Brady Law, we think that if that ruling applies to Brady," it applies to the domestic abuse law as well, said Jim Pasco, executive director of the Fraternal Order of Police. Court challenges have already been filed.

Jesse Choper, a constitutional law expert at the University of California at Berkeley Law School, says Friday's ruling marks yet another case where law enforcement has been viewed by the court as more of a state and local function and the domestic abuse gun ban is especially vulnerable to a court challenge.

Robert Pugsley, law professor at the Southwestern University School of Law in Los Angeles, says the greater issue is whether lower courts will use Friday's ruling as guidance on the domestic abuse law.

The continuing debate over the domestic abuse gun law threatens a coalition of victims' advocates and law enforcement that has been instrumental in pushing anti-crime legislation, including the 1994 Violence Against Women Act. The act set aside \$1.6 billion for programs to fight domestic abuse.

Friday's decision is not expected to change the way most background checks are conducted. Twenty-seven

states require their own background checks, and the federal government is developing a computerized, instant check system that must be in place by November 1998.

Brady law advocates say background checks stopped 250,000 ineligible gun purchasers. "Nationwide, law enforcement fought for this piece of legislation," Sarah Brady, chair of Handgun Control, said Sunday on ABC's *This Week*. "They are going to continue for the most part to run background checks."

## CAPITAL ROUNDUP

### Clinton to announce what he would favor in tax-cut bill

President Clinton outlines today what he wants in the final tax-cut bill Congress will send him. He said separate bills passed last week by the House and Senate are unacceptable. Still, House Speaker Newt Gingrich predicts Clinton will sign the Republican-crafted tax cuts, although some details will change in negotiations between Congress and the White House. "This is a bill that the president is going to sign," Gingrich, R-Ga., told CNN. He said a \$500-per-child tax credit, lower estate and capital gains taxes, and education tax breaks are "the heart of our tax package that we ran on" in 1994. Among major differences between the House and Senate versions is the politically volatile Senate plan to make wealthier seniors pay more for Medicare and to gradually raise the eligibility age to 67 from 65. House Democrats strongly oppose that, and some Democrats say the bill does too little for the poor and middle class while favoring the rich. Tax cuts, says Sen. Richard Durbin, D-Ill., should go to middle class, working families. "Give them a chance to fight in this economy," Durbin says. But Bill Archer, chairman of the House tax-writing panel, says 71% of the tax relief will go to those making between \$20,000 and \$75,000.

— Robert Silvers



Daley: Has vowed to cut 100 slots

**POLITICAL FIRINGS:** The Commerce Department, moving to improve its image of being overrun with political appointees pursuing partisan agendas, fired 40 people who had been hired by the Clinton administration. Another 56 empty positions won't be filled. Commerce Secretary William Daley promised during his confirmation hearings in January to slice at least 100 of the 256 political slots. More cuts are expected later this year. The 40, including an assistant secretary and a handful of deputy undersecretaries and deputy assistant secretaries, were told to leave by Sept. 30. Daley, after business meetings in San Francisco, was golfing when the ax fell.

Although Republican administrations also had politicized Commerce, the Clinton administration was seen as carrying the practice to new heights. Justice Department and congressional investigators are looking into whether President Clinton's first two Commerce secretaries, Ron Brown and Mickey Kantor, rewarded campaign donors with seats on trade missions and other perks.

— Tom Squitieri

**CLEAN AIR CHALLENGE:** The American Trucking Associations says it will file suit to overturn the Environmental Protection Agency's new smog and soot restrictions that President Clinton approved last week. The challenge will be filed as soon as the regulations are printed in the Federal Register. The group's president, Thomas Donohue, says the standards are based on "inadequate science" and the EPA violated a federal law that requires the agency consider how the standards will impact small businesses. Congress also is gearing up for a battle over the proposals, which have split the two parties along lines that pit major industrial states against those with tight pollution controls.

## ALSO . . .

► **R&R:** President Clinton, after two weeks of whirlwind travel, spent the weekend with his family at Camp David in the Maryland mountains. It was their first visit there since Thanksgiving.

► **'NIGHTMARE' BOOK:** Anthony Lake, who was President Clinton's first national security adviser, is writing a book on potential threats to the USA. *U.S. News & World Report* says he'll get \$300,000 for the book, *Six Nightmares*, with scenarios such as a terrorist blackmail threat to explode a nuclear bomb in Washington.

► **REFORM DISSIDENTS:** About 50 dissidents from Ross Perot's Reform Party decided Saturday to break away and form their own national political party. They say the Texas billionaire wields too much power. "When we started this party, it was going to be the party with no special interest money," said Nellisse Muga of San Diego. "Now special interest money runs the Reform Party — Ross Perot's money."

Written by Paul Leavitt with staff and wire reports

USA TODAY

MONDAY, JUNE 30, 1997

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-Begala.

Previous: [Miss D.C. To Join America Pageant](#) 12 Aug. 19:50:03

Next: [Prosecutors: Students Paid To Cheat](#) 12 Aug. 19:49:01

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## **The Nation**

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August 12, 1997

# **First Man Convicted on US Abuse Law**

ASSOCIATED PRESS

CEDAR RAPIDS, Iowa (AP) -- A man who pleaded guilty Tuesday to possessing the gun he used to shoot his wife became the first person to be convicted under a federal law banning anyone with a record of domestic violence from having a gun.

William M. Smith, 21, of Cedar Falls, was convicted at trial of shooting his wife, Lauralee, in the back with a pistol during an argument last November. She was seriously wounded but survived.

Tuesday, he pleaded guilty to possessing a firearm.

Under the federal law that took effect Sept. 30, 1996, Smith faces up to 10 years in prison. No sentencing date has been set.

His attorney, Thomas Frerichs, said the guilty plea reserves Smith's right to appeal the constitutionality of the federal law after Smith is sentenced.

Chief U.S. District Judge Michael J. Melloy has upheld the law, which carries longer prison terms than state laws. Frerichs says he expects to appeal Melloy's rulings to the 8th Circuit Court of Appeals.

Had the case been brought in state court, the most likely outcome would have been a conviction for aggravated assault, which carries a maximum prison term of two years and could have been reduced by parole, U.S. Attorney Stephen Rapp said.

Rapp called the federal law "an effective tool to stop the escalation of violence which sometimes follows the first domestic abuse incident."

In 1994, Smith was convicted of assaulting his wife, then his girlfriend, by grabbing her neck and throwing her to the ground.

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Previous: [Miss D.C. To Join America Pageant](#) 12 Aug. 19:50:03

Next: [Prosecutors: Students Paid To Cheat](#) 12 Aug. 19:49:01

Index: [The Nation headlines](#)

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Date: 06/21/97 Time: 10:37

When police commit domestic violence, punishment is often light

SHERMAN, Texas (AP) Bob Reynolds was someone who'd ride to the rescue if you were in trouble. Unless you were his wife, Charlotte.

He whacked her. He wrenched her wrists. He twisted her arms so hard and so often, her elbows still bother her. Twice, he split her scalp with the butt of a revolver, then stitched her up himself.

Like many victims of family violence, she was too frightened to call police. But Charlotte Reynolds had an extra reason not to call.

"Most of the time," says her husband, "if she called for help, she would have gotten me."

He was a small-town Texas police officer, sometimes a police chief. Eventually, he got help and came to understand that what he did at home was not just something private, not just a marital problem -- it was a crime -- from the first time I hit her to the last."

In the secretive world of American law enforcement, one of the darkest secrets is how many police officers commit the crime of domestic violence, and how slightly they get punished, if they are punished at all.

There is strong evidence that thousands of police batter the ones they love and yet remain on the job, guns strapped to their hips. Often, they are shielded from the consequences of their actions by fellow officers, sympathetic judges and the silent terror of their victims.

"You got to understand where we stand," Deputy Sheriff Donnie Mohler, a Meigs County, Ohio, dispatcher, told a reporter. "You go home and beat the crap out of your husband, it ain't the end of your career."

Most police do not commit domestic violence, of course, and many would not give an abusive colleague a break. But even in police departments that make a special effort to confront the problem, cases of domestic abuse by officers sometimes escape detection; seldom are abusers dismissed from the force.

That means the officer who is beating his or her spouse may be the same one who answers a domestic violence call at your neighbor's house, or yours. And when the abuser wears a badge, the victim can be the most helpless one in town.

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Because domestic violence by police remains largely hidden, it is difficult to measure.

But The Associated Press looked at departments of varying sizes, in various regions, and found evidence of it in 911 dispatch records showing emergency calls from officer's homes, in department personnel records, in divorce files and in criminal proceedings.

In Meigs County, the bite mark on Heather Harless's cheek shows clearly in the police evidence photograph. She reported that her husband, Ohio State Trooper Tom Smith, bit and choked her in December 1995. He claimed she bit him, too, explaining his actions by saying: "You're trained to react. It's not just something you can turn on or turn off ... whether it's home or on the job." It took a second fight before Smith, 25, was charged and fined \$50 for disorderly conduct. The Ohio State Highway Patrol also suspended him for one day, taken as vacation, when Smith agreed to counseling.

In Chicago, the wife of Officer James Nelson went to the hospital one day in November 1994 with second-degree burns on her

face, neck, shoulder and legs. Her husband intentionally splashed her with hot oil, she told police. The officers who listened to her complaint didn't arrest him. They didn't even file a report. Nelson, who has denied the allegation, never faced criminal charges. However, an internal departmental investigation of the matter confirmed the wife's story. As a result, the investigating officers were punished and Nelson, 57, was suspended. The police superintendent wanted to fire him, but the civilian Chicago Police Board ordered him reinstated after he got counseling.

In Lakeland, Fla., the police chief proclaimed Charles Dallas his 1996 Officer of the Year. Chief Sam Baca, who puts a priority on domestic violence, was unaware at the time that Dallas had recently been subject to a year-long restraining order to protect his wife from him. The order was issued after Elaine Dallas swore under oath that her husband had threatened to kill them both and ``bust all of your teeth out.'' The officer, 43, declined to be interviewed. He was never charged.

The AP's findings support the observations of more than 40 experts on policing interviewed for this story. They include police chiefs and patrol officers, psychotherapists who work with police, academics who study them, advocates for victims of domestic abuse, judges and prosecutors. Overwhelmingly, they say that domestic violence by police is a significant problem that has not received sufficient attention.

``The majority of police departments still don't handle it correctly,'' said Anne O'Dell, a former San Diego police sergeant who trains police worldwide in domestic violence prevention. ``They're ignorant about the dynamics of this issue.'' Abusive officers ``deny, deny, deny, deny,'' fooling colleagues and bosses, she said.

Although numbers are hard to come by, two academic studies suggest that police officers are more likely to engage in domestic violence than members of the general public.

Leonor Boulton Johnson, an associate professor at Arizona State University, asked 728 officers in two East Coast departments in the mid-1980s whether they had been violent with their spouse or children in the previous six months. The study did not define what was meant by violence.

The result: 40 percent of the officers said they had.

Three psychologists followed up that study by surveying 425 officers in the Southwest. The anonymous questionnaire asked how often in the past year the officers used violence in marital conflicts. That survey defined violence, from pushing to using a gun.

Again, about 40 percent acknowledged violent behavior. This compares with a rate of 16 percent of couples in the general population, according to studies.

Some experts, including Sheldon Greenberg, a former police administrator who runs the Police Executive Leadership Program at Johns Hopkins University, believe the 40 percent figure overstates the case. The problem has been ``understated for generations, but we want to be careful not to overstate it,'' he said.

Other experts, such as Boulton Johnson, find the studies alarming. ``The thing that needs to be taken very seriously,'' she said, ``is that we're dealing with people who are supposed to be upholding the law.''

Psychologists who study police say it's not surprising some officers are violent at home; in fact, they say it would be surprising if they were not.

``You have an occupation whose primary or core function is the

administration of violence," said Professor Victor Kappeler, an Eastern Kentucky University expert on police deviance. "Would we not expect, then, an entire array of violence outside the workplace, whether against spouses, against children or other people?"

Police are "the heat seekers, the people who like to get things done," said Albert Seng, a therapist in Tucson, Ariz., who before that was a police officer for 25 years. "I think it's easier to take that first step, when you've been working the streets and see people beating each other, or go on domestic violence calls. ... It's easier to take that first step of pushing your wife, or beating her."

Reynolds, the small-town Texas officer who used to beat his wife, says he doesn't buy the common view that blames the stress of police work.

"Everybody has stresses," he said, adding that his violence was learned as a child, watching his father belt his mother. Reynolds now runs a program for batterers through the Sherman Crisis Center.

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In Broward County, Fla., Chief John Feltgen of the sheriff's department was so concerned about domestic violence by police that he decided to do some research. He examined 911 calls from homes of officers in his department and elsewhere to see what he could learn.

He found that, with disturbing frequency, domestic violence calls made from officers' homes dead-ended without a report or real investigation.

This finding confirms what many in policing know from experience.

"We know for a fact many of these things are handled informally and do not become part of the record of the department," said John Firman, research director of the International Association of Chiefs of Police. "There's no question that law enforcement in the past has been a very closed community."

"Rarely does the question of a police officer committing domestic violence become public," said Jacqueline St. Joan, a University of Denver professor and former judge who was editor of a guide for judges handling domestic violence cases. "Is it a cover-up? Or a reluctance of spouses calling police? And what's the police response if and when they are called?"

MORE

APNP-06-21-97 1054EDT

D.C. Superior Court Judge Kaye K. Christian on Thursday, asked area residents to join a citywide volunteer effort to help clean and prepare school buildings on the Saturday before classes start.

"Bottom line, we will open our schools on the 22nd of September. With your help, they will be sparkling," school Chief Executive Julius W. Becton Jr. said at a news conference yesterday. Becton delayed the start of classes by three weeks after failing to persuade Christian that the buildings could open while roof repairs are under way.

Later, at the school system's "Operation Rooftop" command center in an administration building in Northeast Washington, chief operating officer Charles E. Williams said

See SCHOOLS, B5, Col. 5

## Walls of a \$35 Million Jeri

By DeNeen L. Brown  
Washington Post Staff Writer

As the stadium rises, so does Jericho.

This spectacular complex of five buildings, which is called the Jericho City of Praise, sits not far from the new Jack Kent Cooke Stadium in Landover. On 80 acres of land is a Christian academy, a college, a 10,000-seat sanctuary, an administration building and a chapel—making the complex one of the largest church facilities in Prince George's County, a place already home to several mega-churches.

Even as residents in the neighborhood surrounding the towering stadium complain about the potential traffic, bright lights and noise from the arena, the pastor and other leaders of this 8,000-member congregation as they plan to move from an old red brick building in Northampton.

They believe God led them here and they believe God will take care of whatever congestion and noise may come their way.

## D.C. Police to Rid Ranks of Spouse Abusers

### *Soulsby Responds to Federal Law by Vowing to Fire Offenders*

By Avis Thomas-Lester  
Washington Post Staff Writer

D.C. police officials said they have begun a comprehensive review of domestic violence complaints filed against members of the department, in some instances going back years, in an effort to weed out domestic abusers from the force.

Because a year-old federal law bars convicted domestic abusers from possessing firearms—and the law makes no exception for police officers—Chief Larry D. Soulsby said he intends to fire any officer who has pleaded guilty or been convicted in such a case.

In a further step, Soulsby said, investigators plan to carefully re-

view personnel records, police reports and court files concerning officers who were accused of domestic abuse but not criminally charged, or who were charged but acquitted, or whose cases were dismissed. Soulsby said he may fire some of those officers as well, depending on the circumstances of their cases.

"Domestic violence is one of [the department's] worst behavioral problems," the chief declared in an interview. "Officers are paid to keep the peace, and some of them can't keep it in their own households. We can't have that kind of behavior. It's illegal, it's inappropriate and it's unprofessional. We're going to stop it."

Soulsby and other officials de-

clined to speculate on how many officers on the 3,700-member force could be affected by the domestic violence review.

However, of 92 officers currently on suspension pending disciplinary hearings for alleged violations of departmental rules and policies, 18 are on administrative leave for incidents involving domestic violence, police said. They said investigators are aware of at least 100 other officers who have been accused of such violence in the past. Those cases include officers who have been convicted in courts outside the District and officers whose alleged domestic abuse has been reported to their supervisors in phone calls from spouses.

See ABUSE, B4, Col. 1



Ruthann A. Bethesda  
another ho

## ABUSE, From B1

Investigators from the D.C. police internal affairs division are conducting background checks on all the department's armed personnel to bring the agency into compliance with a federal law known as "the domestic violence offender gun ban," which makes it illegal for anyone convicted of domestic abuse to possess a firearm or ammunition. The law, which took effect last Sept. 30, contains no exemption for police officers and is retroactive to cover offenses committed before the law was enacted.

The District force is one of hundreds of police departments across the country working to comply with the law, which has been criticized by police officers as unfair. They said some officers would be punished for offenses that occurred years ago.

But supporters, including many top police administrators, said that police officers often are reluctant to arrest colleagues accused of domestic abuse and that the law forces departments to take action.

"When you combine the fact that it is unusual for a police officer to be arrested for domestic violence, let alone convicted, I think the cases we are seeing that have resulted in convictions are probably the most egregious," said Los Angeles police Inspector General Katherine Mader. "I'm not terribly troubled by the way this law is being applied."

The police departments in Fairfax, Montgomery and Prince George's counties all checked the backgrounds of their personnel for domestic abuse convictions last year, after the law took effect. Spokesmen for those departments said the reviews turned up no officers with such convictions, although two officers in Prince George's have since been charged in

domestic assaults. Their cases have not been adjudicated.

Another Prince George's officer, Cpl. Paul Lancaster, 28, was arrested early Sunday and charged with first-degree murder after he allegedly shot and killed his girlfriend, Christina Hopper, 31, in her Laurel town house. In the hours leading up to the 2:10 a.m. slaying, police had been on the scene three times to deal with a domestic quarrel.

D.C. police department policy prohibits the hiring of a police officer who has been convicted of a felony or any domestic violence offense. But, like some other departments, the District force may hire an officer with a misdemeanor conviction. Many domestic violence complaints result in misdemeanor arrests for simple assault or battery.

The review being conducted by D.C. police began with a questionnaire that officers were required to complete last month, ordering them to disclose their involvement in any incidents of domestic violence. In addition to conducting the survey, Soulsby said, the department is checking records kept by the FBI to determine if any officers were arrested or prosecuted for domestic violence in jurisdictions other than the District.

Six months ago, Inspector Adrian D. Barnes, 47, retired after police officials discovered he had been placed on probation for a year for domestic violence. Former deputy chief Charles R. Bacon Jr., who retired this year, was disciplined twice during his career for incidents of abuse involving women he later married.

In the last two years, at least two other officers have been charged in shootings that grew out of domestic quarrels.

Former D.C. officer George Batista said it would be wrong for the



FILE PHOTO BY DUDLEY M. BROOKS—THE WASHINGTON POST

Chief Soulsby said domestic violence is one of the force's worst behavioral problems.

department to fire officers for old domestic violence convictions without considering each case separately, giving weight to mitigating circumstances.

In 1994, while a member of the force, Batista was accused of seriously beating his girlfriend. But Batista's conviction for battery was vacated by a Prince George's judge, court records show.

In an interview, Batista, 30, denied attacking the woman. He said he was suffering from work-related stress and that the woman was the aggressor in the incident—that "all I did was try to defend myself and try to

stop her from hitting me with several objects she picked up."

He said his "issue" was resolved after he and the woman attended counseling sessions. They are now married, have one child and are expecting another.

"There's a lot of stress [in police work]," Batista said, "and it's [the department's] responsibility to identify when people are stressed out and get them some help before this happens."

Staff writers Patricia Davis, Brian Mooar and Philip P. Pan contributed to this report.

that she was sorry to hear about my friend. She said that because of the people she hung around she didn't think that her boyfriend was doing anything wrong and that she was confused back then."

The boyfriend, one Peter Michael Hall, 31, was described by Emerge as "a flamboyant young man from New York," smooth talker with a Jamaican accent and easygoing manner whom Kemba fell for soon after meeting him at Hampton University. Although Hall would beat her with fists, belts and brushes, Kemba stayed with him. He reportedly even threatened to harm her family; she refused to do what he said.

According to a 16-count indictment filed in U.S. District Court in Norfolk in 1993, Hall was the leader of a violent drug ring that moved as much as \$4 million in powder and crack cocaine between New York and

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United States Department of Justice  
10th and Constitution Ave. NW  
Washington, D. C. 20530

TO: Dennis Burke

FAX: 456-7028

FROM: Beau Biden

VOICE: (202) 514-3737

FAX: (202) 514-5715

**Additional Message:**

Lautenberg materials

# The New York Times

DATE: 3-20-97  
PAGE: A-38

## ✓ Don't Rearm Domestic Abusers

Last year Congress passed a law that prohibited anyone convicted of misdemeanor domestic-violence offenses from purchasing or owning guns. Federal law has long barred convicted felons from possessing guns. But that law left a deadly loophole for spouse and child abusers, who often are prosecuted under misdemeanor statutes. The new statute sensibly plugged that gap.

Now two bills have been introduced that would gut the new ban. Congress should reject both of them.

One bill seeks to overcome the fact that the law passed last year did not exempt police and military personnel who have been convicted of domestic violence charges from the ban. The bill, introduced by Representative Bart Stupak of Michigan, would now insert this unjustified exemption into the law.

The National Association of Police Organizations says the law unfairly forces some officers to give up their careers. That is hardly a persuasive argument. If anything, officers should be held to higher standards of conduct than ordinary citizens. Domestic violence is also an indication of an inability to deal with anger, a sound reason to remove guns from officers with this problem.

Critics of the ban also argue that the law will create staffing problems for police agencies. But

there is no evidence that a significant number of the 700,000 law enforcement officers at the national, state and local levels would be affected. Many police agencies, such as New York City's Police Department, do not hire applicants with misdemeanor convictions for domestic assault in the first place. Even if police groups can show that large numbers of officers would be stripped of their guns, that is not an argument for lower standards. What it does argue for is better screening and monitoring of the officers on the force.

The second bill, introduced by Representative Bob Barr, a Georgia Republican, and Senator Paul Wellstone of Minnesota, a Democrat, would apply the ban only to those convicted of domestic-violence crimes after September 1996. This would effectively rearm the vast majority of offenders. The bill's sponsors argue that the ban is unconstitutionally retroactive. In fact, it does not impose new punishment for earlier crimes. It merely defines who should be allowed to carry a firearm. The same standard, applied to felons, has been upheld as constitutional.

The ban, sponsored by Senator Frank Lautenberg, was approved by 97 to 2 in the Senate. Nothing has happened since to justify weakening a good law that will save lives.

DEC 10 '96 05:08PM U S ATTY ND IOWA



U.S. Department of Justice

United States Attorney

**Press Release***Northern District of Iowa*

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For further information contact:

STEPHEN J. RAPP

(319) 363-0091

Cedar Rapids, Iowa

FOR IMMEDIATE RELEASE

Date: December 11, 1996

**CEDAR FALLS MAN IS FIRST IN THE NATION  
CHARGED UNDER NEW FEDERAL LAW**

CEDAR FALLS, IOWA -- United States Attorney Stephen J. Rapp announced Wednesday that William M. Smith, 20, of Cedar Falls, Iowa, had been charged with possession of a firearm after having been previously convicted of an assault involving domestic violence.

Rapp said that the charge was the first in the nation under a new federal law which took effect on September 30, 1996 which prohibits persons who have been convicted of misdemeanor crimes of domestic violence from acquiring or possessing firearms.

Joining Rapp at a press conference in Cedar Falls were J. Robert Switzer, Special Agent in Charge of the Midwest Region of the Bureau of Alcohol, Tobacco, and Firearms, (BATF), Black Hawk County Attorney Thomas Ferguson, and Cedar Falls Chief of Police Michael Reifsteck, representing the agencies that have been involved in the investigation.

The charge is contained in a complaint filed in U.S. District Court in Cedar Rapids. The complaint alleges that on November 17, 1996, William Smith shot his wife, Laura Lee Smith with a .380 pistol that he had purchased at Duce's Pawnshop in Waterloo on November 15, 1996. According to the complaint a medical examination of Ms. Smith indicated that *"the bullet has passed through her chest. She had an entry wound in her back and an exit wound near her left shoulder. The bullet had come close to her heart and her aorta artery. The bullet broke the sixth rib on her left side and punctured her left lung. Ms. Smith survived the shooting and was eventually released from the hospital."* The complaint also alleges that William Smith had assaulted the same victim on September 13, 1994, by pushing her, grabbing her neck and throwing her to the ground, and was convicted for the assault on November 28, 1994.

"This case demonstrates the BATF's commitment to respond promptly to alleged violations of federal firearms laws that are brought to our attention after initial investigations by local law enforcement agencies," said J. Robert Switzer of the BATF.

"We appreciate the cooperation of the federal authorities in the case," said Cedar Falls Police Chief Michael Reifsteck, whose department has led the Smith investigation. "We know from past experience that the cooperation has led to stiffer penalties against dangerous offenders in our community than could have been obtained in state court."

"Our office has filed several state charges against William Smith regarding the purchase of the pistol on November 15 and the shooting incident on November 17. These will now be dismissed to allow the federal prosecution to go forward," said Black Hawk County Attorney Thomas Ferguson. "Having reviewed the state and federal law and the evidence in this case, I believe that it is probable that a more significant punishment can be achieved in federal court."

"The maximum federal sentence in this case is 10 years in prison and a \$250,000 fine," said U.S. Attorney Stephen Rapp. "For the defendant to be found guilty it is only necessary that we prove he possessed the firearm and had the prior conviction. But in setting the actual sentence the Court can take into account the shooting and injury to Lauralee Smith. Whatever sentence is pronounced, it cannot be reduced by parole. By contrast in state court the most likely result would have been conviction for aggravated assault which carries a maximum sentence of two years and is subject to parole."

On November 11, at a conference of the Iowa County Attorneys Association, Rapp announced that his office would place a high priority on enforcement of the new law prohibiting firearms possession by domestic abusers and he urged local prosecutors to refer appropriate cases for federal prosecution.

"Our Iowa experience tells us that this law could be an effective tool to stop the escalation of violence which sometimes follows the first domestic abuse incident," said Rapp. "In the last six years 83 Iowans, including nine children, were murdered in incidents of domestic abuse. Most of the killers used guns. Many, including one whom our office prosecuted, were previously convicted of domestic abuse assault."

The new federal law restricting firearms rights after domestic assault convictions was sponsored by Senator Frank Lautenberg (D-NJ). It was endorsed by President Clinton in August, passed the Senate by a vote of 97-2 on September 12, and was included in the FY97 budget bill which was approved by Congress on September 30.

The U.S. Attorneys office for the Northern District has filed and successfully prosecuted a number of other firsts in the nation cases including the first indictments under Title III of the Brady Bill and the "Three Strikes" provision of the 1994 Crime Bill. Rapp said that the filing of these cases does not mean that Iowa has a more serious crime problem than other states. "It does reflect a 'can do' attitude on the part of prosecutors in his office who are in close communication with their local counterparts and want to make effective use of every available tool to make their communities safer."

As in every criminal case a complaint or indictment is only an allegation and a defendant is presumed innocent unless and until proven guilty.

2. The County Attorney has concluded that he cannot prove more than aggravated assault under state law because the victim is somewhat uncooperative and says that she does not believe that her husband intended to fire the weapon. An aggravated assault carries a maximum sentence of two years, but rarely involves more than six months in custody.

3. Under federal law, in order to find the defendant guilty we need only prove the possession and the conviction. At sentencing we will ask the Court to cross-reference to the aggravated assault guideline (2A2.2) and apply an upward adjustment for the discharge of the firearm and the serious bodily injury, and establish an offense level of 24, and a probable criminal history of Category III. Depending on acceptance of responsibility this could mean a sentence of 45-78 months.

4. The defendant's 1994 assault conviction was not entered under the state statute's domestic abuse section. However, counsel was appointed for the defendant though he eventually waived counsel in a signed document. The failure to charge domestic abuse assault is understandable given that the police file contains statements indicating that the defendant and victim were ex-boyfriend and girlfriend. The police may have not been unaware that they had a child in common born in 1993 (on which there is an October 1994 decree of paternity). Given that there was the relationship described in the federal statute and there was an assault conviction, we believe that federal prosecution is consistent with the recent position jointly taken by the Departments of Justice and Treasury and which is incorporated in the "open letter to all state and local law enforcement officials" from BATF Director Magaw.

5. The BATF has reviewed the local investigation and adopted the case. Its Office of Legal Counsel has also reviewed the record and strongly supports federal prosecution.

6. We are charging the case first by complaint. The agent's affidavit in support of the complaint is attached. It is anticipated that the case will be presented to the grand jury on Wednesday together with additional evidence and an additional count under 18 U.S.C. Sec 922(a)(6) regarding material misrepresentations as to age and an unrelated criminal charge made by the defendant on the firearms transaction record.

7. Attachments to be sent by fax - Agent's Affidavit  
Draft Press Release

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| DOCUMENT NO.<br>AND TYPE | SUBJECT/TITLE                     | DATE       | RESTRICTION   |
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Ban on Domestic Abusers

2016-0931-S

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### RESTRICTION CODES

#### Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

#### Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

## Attachment 1

STATE OF IOWA )  
COUNTY OF LINN )

ss

## AFFIDAVIT

[001]

I, (b)(6), (b)(7)c first being duly sworn, depose and say  
as follows:

1. I am a Special Agent with the United States Treasury  
Department, Bureau of Alcohol, Tobacco, and Firearms (ATF). I  
have held this position for five and one-half years. I am  
currently assigned to the State of Iowa. Prior to my employment  
with ATF, (b)(6)

(b)(6)

2. I am involved in an investigation of firearms  
violations by William Maurice Smith, hereafter referred to as  
"the defendant." I have reviewed witness statements, police  
reports, court records, and other documents relating to this  
investigation. My review of these documents forms the basis for  
my knowledge of the facts set forth herein.

3. On September 13, 1994, the defendant assaulted Lauralee  
Lorenson. The defendant pushed her, grabbed her neck, and threw  
her to the ground. At the time of this assault, the defendant  
and Ms. Lorenson were not married, but the defendant had a child  
by Ms. Lorenson. The defendant was charged with assault under  
Iowa law and counsel was appointed to represent him. On November

28, 1994, the defendant was convicted of assault by the Iowa District Court in and for Black Hawk County.

4. Eventually the defendant and Ms. Lorensen resumed their relationship and became married. Upon their marriage, Mrs. Lorensen changed her last name to Smith.

5. During the month of October 1996, the defendant assaulted Ms. Smith by grabbing her throat. The defendant admitted to the police that he assaulted Ms. Smith on this occasion. A complaint has been filed against the defendant for domestic abuse assault, but this charge has not yet been resolved.

6. On November 15, 1996, the defendant purchased a Grendel Model P12 .380 pistol, serial number 24022, at Duee's Pawn Shop in Waterloo, Iowa. This transaction was recorded on an ATF Form 4473, which the defendant signed. Based upon my experience and training, I know that the pistol was manufactured in the State of Florida and would have been transported in interstate commerce to the State of Iowa. There are no licensed manufacturers of firearms in the State of Iowa.

7. Between November 15 and 17, 1996, several witnesses saw the defendant handle this firearm. Lauralee Smith saw the defendant carrying the pistol on several occasions. The defendant's brother, Romondus Cooper, also saw the defendant handle the pistol during this period. David Acklin, the boyfriend of the defendant's mother, said that the defendant showed him the pistol as well.

8. On the evening of November 16, 1996, the defendant went with Lauralee Smith to a bowling alley in Waterloo. While they were at the bowling alley, the defendant displayed the .380 pistol. One of Ms. Smith's friends, Sandy Smith, saw the defendant remove the pistol from his pants at the bowling alley.

9. Later that night, at approximately midnight, the defendant returned with Lauralee Smith to their residence at 2003 Waterloo Road, Apartment 8-12, in Cedar Falls, Iowa. They were accompanied by Romondus Cooper and Anne Maria Ohrt, Cooper's girlfriend.

10. The defendant and Lauralee Smith had an argument that night in their apartment. Gabrielle Dewitt, the neighbor in the downstairs apartment, could hear that the defendant and Ms. Smith "were fighting pretty bad because they were either knocking things over or doing something that would cause loud thuds on my ceiling." The defendant has admitted that he and Lauralee Smith were having an argument at this time.

11. At some time between approximately midnight and 2:00 a.m. on November 17, 1996, the defendant shot Ms. Smith in the back with the .380 pistol he had purchased from Duse's Pawn Shop on November 15, 1996. The shooting took place in the bedroom of the apartment at 2003 Waterloo Road. The only people present in the bedroom at this time were the defendant and Ms. Smith. Anne Ohrt, who was in the living room of the apartment, has said that she heard a gunshot at this time. Romondos Cooper was also in the living room, but he said he did not hear a gunshot.

12. The defendant then took Ms. Smith to Sartori Hospital in Cedar Falls. Ms. Smith was treated in the emergency room. The medical examination indicated that the bullet had passed through her chest. She had an entry wound in her back and an exit wound near her left shoulder. The bullet had come close to her heart and her aorta artery. The bullet broke the sixth rib on her left side and punctured her left lung. Because the bullet's path was close to her heart, she was transferred immediately to Allen Hospital in Waterloo for treatment by specialists. Ms. Smith survived the shooting and was eventually released from the hospital.

13. Ms. Smith gave a sworn statement on November 17, 1996. She said that she and the defendant went to their bedroom when they returned home to the apartment shortly after midnight that morning. At this time, she saw the defendant handling the .380 pistol. She went into the bathroom that adjoined the bedroom. As she reentered the bedroom, she heard a noise and felt pain in her back. She could not recall the discussion that she was having with the defendant immediately prior to the shooting. She indicated that the defendant had been violent with her in October 1996.

14. The defendant also gave a statement on November 17, 1996. He initially claimed that Ms. Smith had been shot in a drive-by shooting. He later admitted that he had shot her with the .380 pistol in the bedroom of their apartment. He admitted

that he and Ms. Smith were having an argument that night, but he claimed that the shooting was accidental.

15. On November 17, 1996, police executed a search warrant at the apartment shared by the defendant and Ms. Smith. In the course of this search, police recovered the .380 pistol, serial number 24022, that the defendant had purchased from Duse's Pawn Shop on November 15, 1996. Police also seized a box containing 25 rounds of ammunition. In addition, police found a spent .380 shell casing in the kitchen, another bullet on the bedroom floor, and a third bullet in a safe on the living room floor.

I declare under penalty of perjury that the foregoing is true and correct.

(b)(6), (b)(7)c      Special Agent  
Federal Bureau of Investigation

SUBSCRIBED AND SWORN to before me by      (b)(7)c, (b)(6)      on this  
\_\_\_\_\_ day of December, 1996.

JOHN A. JARVEY  
Chief Magistrate Judge

*Federal Times 11/10/97*

ident Al Gore said Oct. 27 at a press conference.

"More importantly, [the guidelines] direct federal departments and agencies to recognize signs of violence and intervene safely to prevent it," Gore said. "By planning ahead, we will save lives."

The guide is the product of an interagency working group coordinated by the Office of Personnel Management.

### Case Studies

The guide asks users to consider each of its examples of work-

worked with hospital security to give the woman 24-hour protection at the hospital. An agency counselor dealt with social workers to get the woman help, and the inspector general monitored the police case against the man.

The office's union local distributed brochures about stalking and hosted a speaker who discussed stalking.

The woman's supervisor helped her file a worker's compensation claim for her injuries and made sure she was kept informed about office news during her recovery.

work site.

- The rules on enforced disability retirement.

- Building security.

"The experience of agencies which have developed programs has shown that managers are more willing to confront employees who exhibit disruptive and intimidating behavior when they are supported by a group of specialists," the guide says.

Agencies are not required to follow the guide but are committed to preventing violence at work, an OPM spokeswoman said.

## Domestic Abusers Can Be Fired

By Leigh Rivenbark

Federal Times Staff Writer

The Bureau of Prisons will propose firing its law enforcement employees who have domestic violence convictions in their pasts, unless the convictions are expunged or pardoned.

Almost all Bureau of Prisons employees are considered law enforcement, including all prison employees from cooks to correctional officers.

The Justice Department recently discovered 64 bureau employees have past convictions.

A law passed last year says anyone with a domestic violence conviction cannot own or use a firearm. The law has troubled law enforcement groups, who say that able officers may lose their guns, then their jobs, over decades-old incidents.

In an Oct. 16 memo, prison bureau headquarters said it would propose removal of anyone convicted on a domestic violence charge after Dec. 1, 1997, and anyone who has a previous conviction but cannot get it set aside, expunged or pardoned.

Employees with old convictions have one year to get the convictions erased or they will lose their jobs.

Employees with convictions are not precluded from applying for non-law enforcement jobs at the bureau, but those jobs are few. Ninety-three percent of the bureau's staff is at prisons and is considered law enforcement, and of the remaining 7 percent, most also are law enforcement.

The bureau, which investigates job applicants' backgrounds, has until recently hired some people with misdemeanor domestic violence convictions, depending on circumstances and the rest of the employee's personal history, said Phil Glover, president of the American Federation of Government Employees BoP Council.

"I don't think the bureau wants to fire these people," Glover said. "The bureau has already offered that if they have non-law enforcement positions and can move people into them, they will. I think that's positive."

The union wants to fight the law in court, but none of its members has yet lost a job because of the law, Glover said. "We're waiting on the first action to occur so we can challenge the law."

The Fraternal Order of Police has filed suit challenging the law's constitutionality.

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