

## 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 Miller Act<br><input type="checkbox"/> 141 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<br><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 (1395d)<br><input type="checkbox"/> 862 Black Lung (923)<br><input type="checkbox"/> 863 DIWC/DIWW (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 Constitutionality 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<br><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

Category in which case belongs:

- \_\_\_\_\_ A. Anti-Trust Cases
- \_\_\_\_\_ B. Malpractice Cases (Legal/Medical)
- X       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

:  
:  
:  
:  
:  
: 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

250746  
BAR IDENTIFICATION NO.

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

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. \_\_\_\_\_

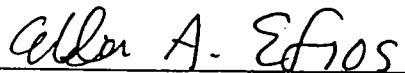
**MOTION FOR APPEARANCE OF COUNSEL PRO HAC VICE**

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

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

**v.**

**Defendant.**

**Civil Action No.**

**THIS CAUSE** is before the Court on the motion of Plaintiff Fraternal Order of Police (“FOP”) to permit Pro Hac Vice appearance of counsel. Upon consideration of FOP’s Motion, it is hereby

**ORDERED** this \_\_\_\_\_ day of \_\_\_\_\_, 1997 that William A. Friedman is granted leave to appear pro hac vice, and participate in this case as counsel for FOP for all purposes.

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

---

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.

**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 misdemeanorants.
49. The movement at one time of a firearm in interestate 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 misdemeanorants 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 misdemeanor 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 misdemeanor 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

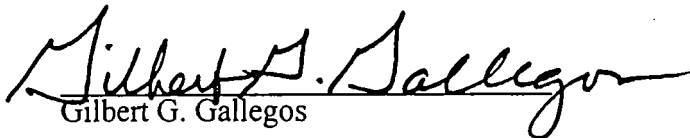
Of counsel:

  
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 PFP*  
*8/31/97*

  
Notary Public

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

**VS.**

**Defendant.**

**Civil Action No.**

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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(505) 989-9800

Date: 1/21/97

CERTIFICATE OF SERVICE

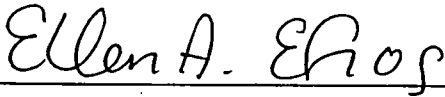
The undersigned has caused the attached Motion for Preliminary Injunction be served on the following persons and in the manner described this 22nd day of January 1997:

**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.

---

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 a 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 misdemeanor.<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 misdemeanor. 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 misdemeanor. 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(I) (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*  
\_\_\_\_\_  
Ellen Efros, DC Bar No. 250746  
Tim McGarey, D.C. Bar No. 420598

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 dispose of 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.

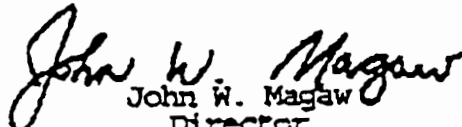
Brady Act

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

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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.

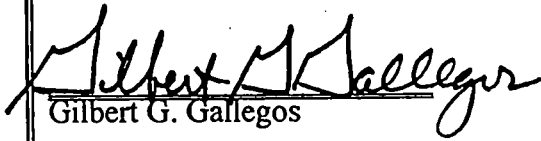
The Gun Control Act Amendments and Implementation and Enforcement

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.

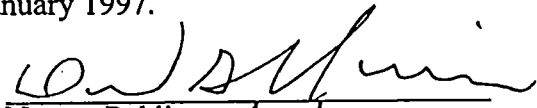
FURTHER AFFIANT SAYETH NOT

  
Gilbert G. Gallegos

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

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# 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:

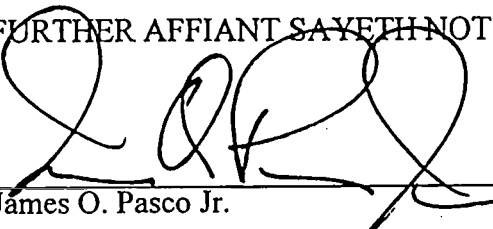
1. I am a United States citizen and am under no disability that prevents me from making this statement.
2. I am the Executive Director of the Fraternal Order of Police (FOP) and have had this role since 1995.
3. This affidavit is submitted in furtherance of my duties as Executive Director and in support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

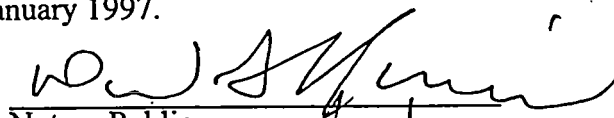
7. Based on my personal knowledge of the legislative process prior to GCA amendment adoption, I believe the amendments as adopted and enacted achieved results not intended by the majority of the members of Congress that voted for the legislation and in particular, almost no discussion regarding the removal 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

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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 domestic 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. Ersslin

Rocky Mountain News Staff Writer



Alex Woods Jr.

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 or 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 Alschaud'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 1,428 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 Moore 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 350 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."

# 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 ENGEL

**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," 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, we to resolve 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 |

50 Sept 96

S 11872 - S 11886

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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

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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 Hutchison, 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

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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

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# 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 organize 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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- 3 -

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

## 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

## WASHINGTON WHISPERS

### PLAYING A WEAK HAND

While the Republicans relish having Watergate bulldog Sen. **Fred Thompson**, a former prosecutor, leading the charge when the Governmental Affairs Committee opens hearings soon on questionable Democratic fund-raising, there is apparently another reason that GOP

leaders tapped this particular committee—the Democratic side is relatively weak. If, as once considered, the Commerce Committee was fielding the high-profile hearings, the Democratic team would have included such scrappy senators as **John Kerry** of Massachusetts, **John Breaux** of Louisiana and **Ernest Hollings** of South Carolina. Instead, **John Glenn**, considered a political softy, will be the senior Democrat on the panel, which also includes the relatively unassertive **Daniel Akaka** of Hawaii and incoming freshmen **Max Cleland** of Georgia and **Dick Durbin** of Illinois. **Joseph Lieberman** of Connecticut is probably the most outspoken among the Democrats, but he has little allegiance to the Clinton administration. One possible wild card: **Carl Levin**, former head of Detroit's public defender office, who could emerge as the only strong voice in the Democrats' corner.

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LEGAL TIMES - WEEK OF MARCH 3, 1997

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# Women's Advocates, Police Split Over New Gun Law

# LEGAL TIMES

LAW AND LOBBYING IN THE NATION'S CAPITAL

WEEK OF  
MARCH 3, 1997VOL. XIX  
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## A Political Gunfight

A new law taking guns away from cops who have beaten their spouses strains relations among advocates for women, police, and tougher gun control.

BY NAFTALI BENDAVID

After Congress last September approved a bill by Sen. Frank Lautenberg to prevent anyone convicted of domestic violence from possessing a

and infuriated police groups made changing the law one of their top priorities for 1997.

But that is turning out to be a hard—and ugly—task. Domestic violence activists, vowing to preserve the gun ban, are taking fierce aim at police groups, forcing lawmakers to choose between two con-



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BY NAFTALI BENDAVID

After Congress last September approved a bill by Sen. Frank Lautenberg to prevent anyone convicted of domestic violence from possessing a gun, the law exploded unexpectedly. Dozens of police departments found they had to lay off or transfer officers with convictions in their past,

and infuriated police groups made changing the law one of their top priorities for 1997.

But that is turning out to be a hard—and ugly—task. Domestic violence activists, vowing to preserve the gun ban, are taking fierce aim at police groups, forcing lawmakers to choose between two con-

SEE COPS, PAGE 19

At a recent press conference, Denise Brown (far right), Sen. Frank Lautenberg, and Rep. Carolyn Maloney argued against exempting police from a new domestic violence gun law.



## Firm Sues Nigeria Over Fees

Washington & Christian Besel by Money Woes

BY T.R. GOLDMAN

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LEGAL TIMES • WEEK OF MARCH 3, 1997

1

# Women's Advocates, Police Split Over New Gun Law

OPS FROM PAGE 1

inencies nobody likes to oppose: America's best and battered women.

And that's the least of it. The fight also threatens to torpedo a broad set of alliances that has driven crime policies recently.

Most dramatically, it endangers the coalition of police and anti-gun activists

that's responsible for the Brady law and the assault weapons ban. And the battle jeopardizes the delicate partnership between police and domestic violence activists that yielded the 1994 Violence Against Women Act.

"There are all kinds of twists that have come out," says Sue Glick, an analyst with the Violence Policy Center, an anti-gun research group. "And it's sad because it takes me focus off what this legislation really does."

Most surprising, two of the nation's major police groups—the Fraternal Order of Police (FOP) and the National Association of Police Organizations (NAPO)—are engaged in a firefight over the best way to write the law.

"We've worked together on a number of things and gotten a lot of things passed," mourns Christopher Donnellan, legislative director of the International Brotherhood of Police Officers, which sides with NAPO. "When there is dissension, we're just not as successful."

## BARR'S MOVE BACKFIRES

The seeds of this discontent were sown amid Congress' usual end-of-session legislative rush last year, when Lautenberg introduced his plan to take away the guns of anyone who'd ever been convicted of a domestic violence misdemeanor. (Felonies

have been covered for some time under an earlier law.) The measure, pushed hard by President Bill Clinton, was just the kind of crime bill the White House loves, smacking of both law and order and women's rights.

Like all gun control laws, the Lautenberg bill exempted cops on duty. But then Rep. Bob Barr (R-Ga.), a fierce pro-gun activist, surprised everyone by insisting during conference committee negotiations that cops be covered by the ban too.

It is unclear why Barr took this action; some, including Lautenberg, believe he was trying to inject a "poison pill," a measure so objectionable the entire bill would go down.

Instead, the Lautenberg bill passed, soon putting Barr in the uncomfortable position of seeming responsible for taking hundreds of cops off the street. Now, in a strange twist, Barr appears to be denying that he deleted the exemption, though five people who followed the legislative process confirm that he did.

"He'll say he didn't do it," says Robert Scully, NAPO's executive director. "He'll blame it on the administration or whoever. But the bottom line is, he did do it."

Barr became so upset at the portrayal of his role that he dashed off an angry letter to President Clinton on Jan. 3, complaining of the "dissemination of misinformation by senior members of your staff" and blaming the law's problems on the way the administration was enforcing it.

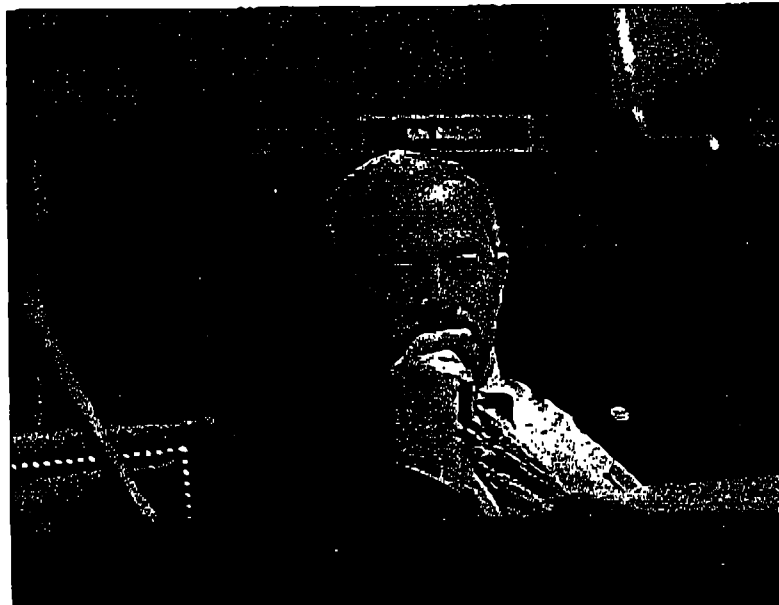
Barr apparently remains squeamish about discussing the bill. His press secretary, Carter Cornick, did not return four phone calls or respond to faxed questions last week.

But if Barr had wanted to toss a grenade into the centrist alliance that has given President Clinton some of his biggest victories, he could not have done a better job. Under the guidance of senior adviser Rahm Emanuel, President Clinton has deftly crafted a series of anti-crime initiatives that bring together key factions—from police to women to gun control supporters to conservative suburbanites. Examples of these initiatives: gun control, community policing, teen curfews, school uniforms.

**'It's important  
that the domestic  
violence  
and police  
organizations  
work together.'**

Sue Glick

Violence Policy Center



Rep. Bob Barr, a fierce pro-gun activist, surprised lawmakers by insisting the Lautenberg bill cover police officers, possibly because he thought it would kill the measure.

apolis, five were placed on paid leave (though four got their records expunged and returned to work). Two field officers were assigned to desk jobs in Denver; two more met the same fate in Reno. A sheriff's deputy in Fulton County, Ga., was laid off.

No nationwide numbers are available, but police leaders estimate that several hundred cops are affected, out of 600,000 sworn officers in the United States.

Police officers say they are being unfairly singled out for punishment since for them, losing their guns is a job-threatening blow.

"Everybody else in the country that has a conviction of domestic violence loses their right to own and possess firearms," Scully says. "But for law enforcement, that's the official tool of our trade. Without the ability to have a firearm when we work, we can't work."

Two House members have scrambled to respond to the police call for emergency assistance. Rep. Bart Stupak (D-Mich.), himself a Michigan state trooper from 1973 to 1984, has introduced a bill reinstating the police exemption. NAPO, along with several other police groups, quickly announced its support.

Meanwhile, Barr introduced a bill that would simply wipe out the retroactive portion of the Lautenberg law, so it would not apply to past domestic violence crimes by police or anyone else. But in the future, those convicted of a domestic violence offense—including cops—would still lose their right to bear arms.

The FOP, apparently alone among major police organizations, signed on to the Barr bill. This puzzled and infuriated other police leaders since the Barr measure does not exempt police and the alternative bill does.

"I have no idea why they did that,"

Scully bluntly puts it. "If we don't get this situation rectified, I'm going to be hard-pressed to recommend to my members to keep pursuing other gun control laws."

Indeed, gun control groups seem to be dancing around the issue, perhaps out of fear of alienating police. Handgun Control Inc., for example, has taken no position on the attempts to rewrite the Lautenberg bill, saying the issue needs further study.

Potential fallout between police and domestic violence groups is similarly ominous.

"It's very important that the domestic violence organizations and the police organizations work together," says Glick of the Violence Policy Center. "They have

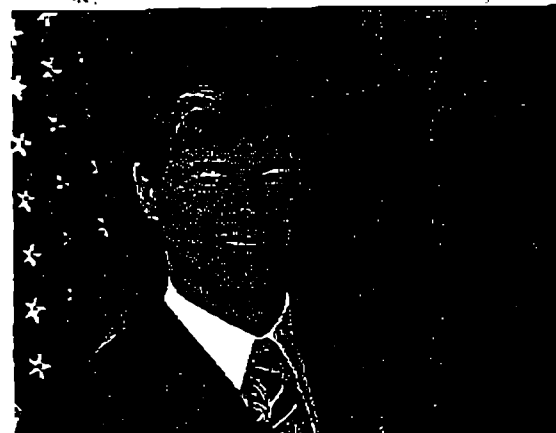
made great strides together. It would be unfortunate if it turned into the police organizations against the domestic violence groups."

Feminist leaders acknowledge that they were unprepared for the vehemence of the police crusade, and that their response has so far been somewhat disorganized. But in recent days these activists have started to speak out in a unified way.

"We will do everything we can to leave the ban as it is," says Donna Edwards, executive director

of the National Network to End Domestic Violence. "We cannot be in the business of giving guns to people who we know to be dangerous, even if they are good cops."

If that angers police, Edwards adds, so be it. "It is true that there is a relationship that has been built with police officers in many states," she says. "But we cannot use that coalition building as an excuse to put weapons in the hands of people who have committed domestic violence."



NAPO's Robert Scully: Police can't work without firearms.



Rep. Bart Stupak, a former Michigan state trooper, has introduced a bill reinstating the exemption for police officers.

### OFF THE BEAT

But when the Lautenberg law, minus the exemption for cops, hit the streets, it neatly cleaved this alliance. News articles began surfacing about hard-working police officers being unceremoniously yanked from their beats because of this harsh domestic violence measure.

In Detroit, four officers were suspended without pay. In Minne-

NAPO's Scully says of his FOP brethren. "If I said the Barr proposal is great, I would be selling all of my current and future members down the river."

James Pasco, FOP's executive director, responds that his group simply chose the superior fix.

"We think the Barr bill is better because it addresses the problem we saw with retroactivity," Pasco says. "And it treats police the same as everyone else prospectively. And that's all we ask."

### IMPENDING SPLIT

But any rupture in the thin blue line is minor compared to the potential fracture between police and gun control activists. As

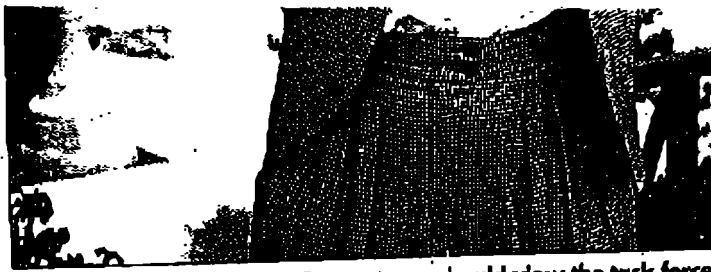
crimes."

The first salvo in the counteroffensive was fired at a press conference held last Wednesday in Washington by Sen. Lautenberg, Rep. Carolyn Maloney (D-N.Y.), and groups such as the National Organization for Women.

### 'IT'S NOT OK FOR ANYONE'

The star attraction was Denise Brown, sister of O.J. Simpson's slain wife, Nicole Brown Simpson.

"I know law enforcement needs all the support they can get," said Brown. "But why some police unions are asking for are specu-



Professor Robin West says Georgetown should view the task force study as "an opportunity" for making the school a better place.

tackle. She hopes the committee will take a broad look at gender in the law school—from the grade issue raised by students to other possible problems facing faculty and staff.

"The institution

released this week, Georgetown University Law Center fell from 12 to 14; George Washington University Law School, from 22 to 24.

The two schools fell, even though they held steady or actually moved up in many of the individual measures the magazine relies upon. For example, Georgetown's employment rate for graduates went up from 94 percent to 98 percent. And George Washington's overall score dropped only

of the District of Columbia

## Interest Groups Divided Over Gun Law

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exemptions . . . as though their domestic violence is OK. Well, domestic violence is not OK for anyone. It's not okay for you, it's not for me, it's not OK for the police."

The domestic violence activists' job of keeping the Lautenberg law intact is made harder by the position of Sen. Paul Wellstone (D-Minn.). Wellstone, among the strongest supporters of women's issues in Congress, has introduced a Senate version of Barr's bill that does away with retroactivity for everyone but does not exempt police going forward. "I don't understand it," Lautenberg says of his colleague's position.

Wellstone defends his action. "I think this is the fairest way to apply a law intended to make it clear that domestic violence will not be tolerated by any perpetrator—regardless of job, economic status, race, or any other classification," Wellstone said in a prepared statement.

### POSSIBLE COMPROMISE

There are signs that a compromise can be reached between police and spousal abuse groups. The odds for such a solution will become clearer at a hearing of the House Judiciary Subcommittee on Crime, scheduled for this Wednesday and featuring both police groups and domestic violence activists.

Several compromises already have been floated. For example, the gun ban could be modified to exempt police, as Stupak wants—but only for retroactive offenses, as Barr suggests. Another possibility: Exempting only cops who meet certain requirements, such as

agreeing to undergo special evaluations.

Lautenberg himself, while careful not to commit himself, does not slam the door on a compromise. "Right now, there is no basis for considering an exemption," the senator says. "But I am willing to listen."



FOP's James Pasco says his police group supports the Barr bill, which wipes out retroactivity for everyone but treats police officers like anyone else in the future.

**U.S. News & World Report**

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Law, Business, Medicine, Engineering, Education, Health, and more.

U.S. News & World Report Washington area law

tier from fifth. (There is year's tally.)

But local law school breathless about those says Robert Dinerstein at American University rhetorical advantage to second tier rather than

In the magazine's raw "specialties," such as intellectual property law, A Georgetown, and George Washington the only local schools training, Georgetown U No. 1; American, No. 3.

George Washington's program ranked among country, as did several programs.

But this informal Friedenthal, GW's dean, "ingless," he says.

Deirdre Shesgreen gre@counsel.com. "appears monthly in Le



DATE: 3-6-97  
PAGE: 3A

## Ban on abusers carrying guns divides coalition

By Gary Fields  
USA TODAY

WASHINGTON — A law that bans anyone with a domestic abuse conviction from carrying a gun threatens to fracture what has been a powerful coalition of gun control advocates, domestic abuse groups and law enforcement.

The nation's largest police organizations say the law unfairly punishes officers because they can lose their jobs if they have to give up their weapons, and they want the law changed to let officers keep their guns.

But advocates for domestic abuse victims and some other officers ask why law enforcers should be exempt from a law crafted to protect battered spouses and their families.

The sides were far apart Wednesday as the House subcommittee on crime heard proposed changes to the law, which covers misdemeanor domestic abuse convictions and is retroactive from Sept. 30, 1996.

The Fraternal Order of Police, the nation's largest police organization, wants the law to cover police but doesn't want it to be retroactive.

The National Association of Police Organizations and the International Brotherhood of Police Officers both support giving law enforcement an exemption that would allow officers to carry their weapons on duty.

Advocates for victims and the National Black Police Association say the law should be left alone. Police officers "ought to be above and beyond the standard we want to set for our society," says Ronald Hampton of the National Black Police Association. "We should hold police to a higher standard, not a different standard."

Behind the debate is the concern that divisions could endanger the coalition that pushed through the 1994 crime bill that set aside \$1.6 billion for the Violence Against Women Act and the assault weapons ban.

But, "we cannot hold up the weight of the coalition at the expense of women and children's lives," said Donna Edwards of the National Network to End Domestic Violence.

Jim Pasco of the Fraternal Order of Police says he does not think the "point of no return" has been reached, but, "I think the potential is certainly there. I'm very concerned about it."

Ultimately, how much damage is done depends on how many officers are affected. Early indications are that the number won't be astounding. A USA TODAY survey of 25 departments that account for 106,000 officers found that 152 had been affected so far. At that rate, about 860 of the nation's 600,000 sworn police officers would be disarmed. Police organizations have said the number could be much higher.

Concern over the possibility of a breakdown between allies pushed the highest-ranking Democrat on the subcommittee to urge the groups to stick together. "The law enforcement community and the victim's rights and women's rights groups have worked together in recent years to make real progress on domestic abuse," said Rep. Charles Schumer of New York. "We cannot allow ourselves to be divided."

# The New York Times

## Bombing Suspect

### 'Confession' Document Is Further Disparaged

DATE: 3-6-97

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By JO THOMAS

DENVER, March 5 — After five days of controversy over the publication in The Dallas Morning News of what appeared to be a confession in the Oklahoma City bombing case, the only thing that is clear is that the trial will start on schedule on March 31.

On Tuesday, Stephen Jones, the lawyer for Timothy J. McVeigh, and Oklahoma's United States Attorney, Patrick M. Ryan, met privately with Judge Richard P. Matsch of Federal District Court, saying afterward that they did not ask the judge to delay the trial.

The Dallas newspaper article, published last Friday and Saturday, cited what it said was a document from Mr. McVeigh's legal defense team, which quoted Mr. McVeigh as saying that he drove the truck with the bomb that killed 168 people in the Alfred C. Murrah Building, and that he wanted a "body count."

During the weekend the article appeared, Mr. Jones had denounced the document as a hoax. But on Monday night, in a sharp change of direction, Mr. Jones's office issued a press release saying that the document was faked by a defense investigator as a ploy to obtain information from a potential witness in the case.

"The person for whom the alleged statement by Mr. McVeigh was intended had a history of incitement to violence and criminal activity and was suspected by the defense of being involved in the conspiracy to bomb the Murrah Building," the statement said.

"The defense believed that this person was willing to talk if the individual believed that he was not suspected by the defense of being a participant in the bombing."

Mr. Jones would not identify the person he said was the object of the defense ploy. But privately, defense lawyers involved in the case said it was Louis Beam, a leading figure in

the far right who advocated making war on the Federal Government after his acquittal on Federal charges of sedition in 1988.

Mr. Beam, a former Grand Dragon of the Texas Ku Klux Klan and ambassador at large for the Aryan Nations, a white supremacist group, is a proponent of "leaderless resistance," or fighting the Federal Government with small paramilitary cells with no formal chain of command, to better insulate members from informers and arrest.

The statement issued by Mr. Jones's office said the defense investigator was helped by two other people. One, according to the statement, is "an individual who writes frequently about the Oklahoma City bombing case."

The other, a member of the defense team said, was Jack Maxwell Oliphant, an white supremacist who lived near Kingman, Ariz.

After the bombing, Mr. Oliphant told reporters he had no connection with the bombing or Mr. McVeigh. But he was quoted as saying Mr. McVeigh would have been a hero if the Federal Building had been blown up in the middle of the night. Mr.

Oliphant, 71, died in 1995.

J. D. Cash, a freelance journalist who has written for the Jubilee, the leading publication of the far-right Christian Identity movement, and for The McCurtain Daily Gazette, in Idabel, Okla., said on Saturday that he had seen the faked document.

Today, Mr. Cash said it was prepared by Richard Reyna, a private investigator in Conroe, Tex., who has sometimes worked for the McVeigh defense team. Mr. Reyna could not be reached for comment.

"Richard showed me that document when we were riding in a car

about a year ago, and we laughed about it," Mr. Cash said.

"It read like a Mickey Spillane novel. When I got to the part about 'McVeigh looked directly into my eyes,' I kidded Richard that his creative juices were going."

Mr. Cash said he and Mr. Reyna traveled to Jubilation, a three-day meeting of the far right, at South Lake Tahoe, Calif., last April. Mr. Cash and Mr. Beam were both scheduled to speak at the meeting, and Mr. Cash said Mr. Reyna and Mr. Beam spoke privately for more than three hours. He said he did not know whether Mr. Reyna had ever shown the faked document to Mr. Beam.

But Mr. Cash disputed statements from the member of the defense team that Mr. Beam was the witness Mr. Reyna had in mind when he wrote the document. Mr. Cash said that Mr. Reyna told him that witness was someone else, whom Mr. Cash refused to name.

The faked document, Mr. Jones said in a press conference on Monday, was among thousands, including those containing 25,000 interviews conducted by the Federal Bureau of Investigation, that he said he thought the Dallas newspaper had acquired. He called them stolen property.

The Dallas paper has maintained that it obtained the document legally, but on Monday it filed a statement with the Federal court here, saying it would not print more articles based on that document.



DATE: 3-6-97  
PAGE: 12-A

## ' Don't wink at violence

**OPPOSING VIEW** **An abuser is an abuser, regardless of where he works. Allow no exceptions.**

By Bob Barr

When our Founding Fathers drafted our Constitution, they explicitly blocked the government from passing laws and then unfairly applying them to crimes committed before the laws were enacted.

Unfortunately, the Clinton administration has chosen to blatantly ignore this constitutional guarantee against *ex post facto* laws and apply a recently passed law to crimes committed decades ago.

Furthermore, the same people who argue that the law should be enforced in a way that violates the Constitution also have the audacity to ask for a special exemption for *all* government employees.

The issue at hand is a ban on firearms ownership for individuals who have committed crimes of domestic violence. This is important and worthwhile legislation, and we cannot allow its effectiveness to be reduced by asking law enforcement agencies to circumvent the Constitution and enforce it retroactively.

I introduced legislation to clarify the fact that it is wrong and unconstitutional to enforce the law retroactively. My amendment

will clear the way for law enforcement personnel to focus their energies on aggressively preventing domestic violence crimes and disarming individuals committing them *after* the law's passage.

Original language proposed by Sen. Frank Lautenberg, D-N.J., in the waning hours of the last Congress also exempted from the gun ban all government personnel (federal, state and local). This means, for example, that an individual working for the Bureau of Labor Statistics could abuse his wife or child and keep his firearms, whereas a privately employed person would be required to give up his guns upon conviction. Is one abused wife less worthy of protection based on where her husband works?

Creating an exemption in the law wide enough to drive a train through encourages neither effective enforcement nor respect for the law. Instead, by giving many dangerous individuals a special exemption, it sends a message to society that domestic violence is something to be winked at as long as you work for the government.

The Fraternal Order of Police, Southern States Police Benevolent Association and others support my legislation because they realize, as do I, that no one deserves special treatment, but everyone is entitled to the full protection of our Constitution.

*Bob Barr is a Republican congressman representing the 7th district of Georgia.*

## Doctors and Medical Marijuana

The tactic the Clinton Administration has chosen to head off the medical use of marijuana in California — threatening doctors who recommend marijuana to their patients — is a dangerous and unwarranted interference with free speech and a patient's right to hear the truth from a doctor. In its effort to enforce Federal narcotics laws, the Administration needs to make clear that it will do nothing to prevent doctors from delivering their best medical judgments to their patients.

Proposition 215, approved by California voters last November, makes it legal under state law for a seriously ill patient to possess or cultivate marijuana for medical purposes if a doctor has advised, either orally or in writing, that the use of marijuana is medically appropriate.

The Administration has not challenged the legality of the state statute directly in court. Nor has it brought new prosecutions against buyers' clubs that provide marijuana to the seriously ill or against patients suffering from AIDS, cancer and glaucoma who smoke marijuana for relief from nausea, vomiting and pain.

Instead, the Federal Government has said that it would clamp down on physicians. Threats of losing their right to prescribe drugs, exclusion from participation in Medicare and Medicaid, and Federal criminal prosecution have silenced many doctors. Last December the California Medical Association advised its members to make no recommendations on marijuana lest they be prosecuted.

A recent lawsuit brought by prominent AIDS and cancer physicians in California argues that the Administration's threats violate their First Amendment rights and intrude on physician-patient communications. Last Friday the Administration issued a statement saying that doctors may discuss the pros and cons of medical marijuana, but may not

intentionally make oral or written statements or "recommendations" that enable patients to obtain it. That formulation seems to mean that, even if a doctor thinks marijuana the best treatment for a particular patient, he cannot say so because, under the California law, a patient may use a doctor's recommendation as a defense against state prosecution for possession of marijuana. This is an improper restriction on medical judgment. After all, a doctor's recommendation does not place marijuana in a patient's hands. It is still the patient who procures the drug.

Thousands of doctors have recommended marijuana to cancer and AIDS patients in past years. A 1990 Harvard survey of more than 2,400 oncologists found that 44 percent of those responding had recommended marijuana to cancer patients undergoing chemotherapy. Doctors making similar statements in California now could become targets of Federal investigations and punishment.

The Administration's policy issued last December said that any "action of recommending" marijuana would trigger Federal sanctions. Now Justice Department lawyers, facing a fierce counterattack from the medical community, are blurring the issue, saying that only doctors who make recommendations with intent to help patients get marijuana are liable. But how can one distinguish intent to help patients obtain the drug from intent to tell them the best therapy to use? The plaintiff doctors are right to press for clarity on this issue.

The Administration says it does not want to gag doctors, but its stated policies lead in that direction. If there truly is no gag rule, then doctors should be free to say what they want, including advising the use of marijuana, without fear of reprisal, as long as they do not otherwise assist patients in getting the drug, which remains illegal under Federal law.



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PAGE: 12-A

Today's debate: GUNS &amp; DOMESTIC VIOLENCE

## 'Fairness' guts gun law

**OUR VIEW** This week's attempt in Congress to 'improve' the domestic violence law actually would destroy it.

There are so many good reasons for the federal law that prohibits wife beaters from owning guns that the only reason to amend it is to make it better. Yet a slyboots campaign to destroy the law under the guise of making it "fairer" is getting most of the attention this week in Congress.

The law, enacted last fall, bans gun ownership by those with a misdemeanor conviction for domestic violence. Rightly so. Each year, there are tens of thousands of incidents of domestic violence involving guns. A firearm in the home triples the risk of a homicide there.

The ban does have one small flaw. It lacks a "government use" exception. This clause, which already applies to the eight other federal gun bans, would permit local, state and federal law enforcement personnel to possess guns while on duty even if they have prior records.

Evidence suggests that few of the nation's 600,000-plus cops will actually lose their jobs. But restoring the exemption makes sense anyway. Unlike the general public, law officers operate under extensive oversight. Their commanders are able to decide who should be disarmed. (When off

duty, the prohibition would still apply.) Moreover, the exception will keep gun laws consistent and thus credible.

Another proposed change — this one truly dangerous — would eliminate retroactive application of the ban. Under the law, even a years-old misdemeanor means you give up your guns. Critics say that's unfair, that gun owners would not have pleaded guilty if they had known it someday would mean surrendering their weapons.

Maybe. But if they had known they would be caught, they wouldn't have coldcocked their spouses in the first place. More to the point: The ban doesn't make previous behavior illegal. It creates a new standard for gun ownership. The courts have ruled this type of law is constitutional.

The new law will be a burden for some, to be sure. But stripping it of retroactivity renders it largely ineffective. Instead of helping prevent deadly domestic violence, that step will ensure that hundreds of thousands of known abusers will stay armed.

Banning gun ownership by those convicted of domestic violence misdemeanors is not a complex idea, and it doesn't require much fine-tuning. As a matter of consistency with similar federal law, it ought to provide an exception for on-duty law officers. And as a matter of domestic safety, it should remain retroactive. Otherwise, a ban that is now mostly fair will be turned entirely foul.

# The Washington Post

DATE: 3-6-97

PAGE: 0-3

## Lawsuit Says D.C. Misused Crime Funds

### *Ex-Analyst Alleges U.S. Grant Misspent*

By Brian Moar and Toni Locy  
Washington Post Staff Writers

The District submitted false claims to the U.S. government and kept more than \$19 million intended to hire police officers for the city's war on violence, according to a federal lawsuit filed by a former city budget supervisor.

Earl S. Settemire, a supervisory budget analyst for the police department from 1985 until 1993, alleged in a lawsuit unsealed this week that the District did not spend the full amount it was given under the Federal Drug Emergency Officers Act during the same years the city's homicide rate reached its bloody zenith.

The suit alleges that the District knowingly submitted false records showing that it used the grant money, even as large sums were being funneled back into the city's general fund at the end of each year.

Settemire was transferred from the budget office to the police public information office, where he still works. His attorneys contend that he was moved because he refused to authorize the expenditure of funds, believing it was inappropriate.

The suit claims that the District owes the federal government \$19 million to \$92 million. Settemire could be entitled to a quarter of any amount the District would be forced to pay back. His claim, which he filed a year ago, was ordered unsealed Tuesday by U.S. District Judge Ricardo M. Urbina.

The Justice Department has declined to join Settemire's lawsuit, although it could do so later.

Sgt. Joe Gentile, a D.C. police spokesman, referred all questions about the suit to the corporation counsel's office. Officials from the

corporation counsel and the mayor's office did not return telephone calls seeking comment.

D.C. Mayor Marion Barry (D) asked the White House and the federal drug czar in 1989 for \$28 million to finance 700 more officers for the District.

A bill the House of Representatives passed in June 1989 passed the Senate five months later after meeting stiff opposition from senators who believed that the District should have been doing more to fight drug-related crime on its own turf.

At the request of Sen. Carl M. Levin (D-Mich.), the bill was amended to require that the District finance 4,355 officers from its own budget before the city could hire more officers using the federal money.

Levin blamed the District for allowing its police force to dip to 4,000 officers in the late 1980s despite a sharp increase in violent crime.

"Mr. Levin specifically pointed out that the District of Columbia was being accorded special treatment in the appropriations process not accorded other American cities in that it did not have to compete in a nationwide program," the suit said.

The Drug Emergency Officers Act, which President George Bush signed Dec. 12, 1989, provided about \$25 million a year from fiscal year 1990 through 1993.

The lawsuit questions whether the District was entitled to any of the money because the city never consistently stayed at the threshold of 4,355 officers.

The department's ranks lost ground at a time when the District was experiencing early symptoms of its current budget crisis and at a time when then-Mayor Sharon Pratt Kelly was working to pare the city's payroll as she had promised during her 1990 election campaign.

A report in January 1993 by the D.C. personnel office showed that the police department lost a total of 643 workers, compared with net losses of 493 workers in human services and 272 workers in public works. At the same time, the rolls of the city Corrections Department were increased by 548 workers and the fire department ranks by 161.

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## NRA-ILA FAX ALERT

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Phone: 1-800-392-8683 \* Fax: 703-267-3918 \* GROOTS@NRA.org

Vol. 4, No. 9

2/28/97

## PRESIDENT'S PLACE IN HISTORY SECURE

If there was somehow any doubt that President Bill Clinton is the most anti-gun President in our history, it was erased this week. On Wednesday, the President took a number of steps consistent with his hostility toward law-abiding gun owners. First, in urging Congress to pass his national trigger lock bill, Clinton directed all federal agencies to require trigger locks to be issued with every issued handgun. In pure political posturing, the President ignored the facts that firearms are used 2.5 million times annually for self-defense (and trigger locks would render them useless) and that trigger lock manufacturers warn against using the devices on loaded guns. Additionally, Mr. Clinton turned a blind eye toward NRA's safety and training efforts, which have reached more than five million Americans in the last eight years, and have driven down the fatal firearms accident rate to an all-time low (National Center for Health Statistics). Through our national network of 35,000 certified instructors, NRA provides more training than any organization in the U.S. -- including the military! It's time the President acknowledged that training and education, not political grandstanding, stand at the heart of firearms safety.

Next, the President stated his support for a bill introduced by Sens. Kennedy (D-Mass.) and Durbin (D-Ill.) to prohibit foreign visitors from lawfully purchasing or possessing firearms. Unfortunately, this proposal is inconsistent with the very fabric of our nation, that causes millions of foreigners to move to the United States specifically so they may enjoy the U.S.A.'s unique, individual freedoms. What's more, the Kennedy-Durbin bill would threaten legal U.S. citizens who may look or sound foreign, and prohibit individuals legally within our borders from exercising their means of self-defense. According to Kennedy, "There is no legitimate reason why someone who is in the United States temporarily should be able to purchase or carry a firearm here." (New York Times, 2/28/97). That's easy for Kennedy to say, as he has enjoyed the protection of a corps of armed bodyguards!

Finally, the President renewed his push for a ban on so-called "cop-killer" bullets. This latest plea came despite the fact that not one police officer has ever been fatally shot through a protective vest with a handgun bullet designed to defeat these vests. The result of such a law would be the virtual elimination of every self-defense, hunting and target round used in North America! Again, demonstrating his inclination to score political points rather than address the real problem, the President was silent on the fact that in the last 10 years, 73% of those involved in officer killings had prior criminal arrests, 56% had been convicted of criminal offenses and 23% were on parole or probation at the time of the killing. Fraternal Order of Police (FOP) president, Gilbert Gallegos, who recently pledged his group would not support additional gun control schemes, sang a different song this week. When asked about the Clinton bullet ban, Gallegos exhorted, "Let's get this issue resolved once and for all -- and to hell with special interests!" (U.S. Newswire, 3/5/97).

DOMESTIC VIOLENCE HEARINGS: This week, the House Subcommittee on Crime held hearings on the misguided Lautenberg law, that

prohibits those convicted of certain misdemeanor crimes of domestic violence from possessing firearms. Rep. Schumer wasted no time in attacking the NRA, accusing us of creating a controversy to drive a wedge between law enforcement groups and victims' rights organizations. This allegation was rebuffed by Rep. George Gekas (R-Pa.) who pointed out how supportive NRA is, and has been, of law enforcement. Rep. Bob Barr (R-Ga.) accurately noted how these hearings should have been held prior to Lautenberg being rammed through Congress at the last minute. Related bills have already been filed in the U.S. House on this subject, and we'll keep you posted on these measures as more information becomes available.

**FORK OVER THOSE FORMS:** HCI is suing BATF to require the disclosure of information from multiple-handgun purchase forms (Center to Prevent Handgun Violence [CPHV] v. U.S. Department of Treasury). CPHV (the "educational" arm of HCI) claims that, under the Freedom of Information Act (FOIA), BATF is required to release the names of the licensees who report multiple sales along with the serial numbers of the handguns sold. The Treasury Dept. and BATF are arguing that the identities are being properly withheld under the exemption in the FOIA concerning privileged commercial information.

#### **A LOOK AT THE STATES:**

**Hawaii:** HB 233, the NRA-backed bill allowing transportation of handguns for hunting passed the House. HB 233 now moves to the Senate Economic Development Committee for consideration. Members: Please call your State Senators and urge them to support HB 233.

**Kansas:** HB 2159, NRA-backed Right to Carry has been reported out of the House Federal and State Affairs Committee. As early as Monday, the full House could consider HB 2159. Members: Please contact Governor Graves at (913) 296-3232, even if you have called before and encourage him to support HB 2159.

**Mississippi:** HB 33, NRA-backed right to carry reform legislation has passed the Senate, but must now go back to the House for concurrence. Members: Please call your State Representatives at (601) 359-3770 and urge them to concur with the Senate version of HB 33.

=+=+=+=+

This information is provided as a service of the National Rifle Association Institute for Legislative Action, Fairfax, VA.

This and other information on the Second Amendment and the NRA is available at: <http://WWW.NRA.Org>



## U. S. Department of Justice

*Lautenberg*

Washington, D.C. 20530

## MEMORANDUM FOR THE DEPUTY ATTORNEY GENERAL

FROM: STEPHEN R. COLGATE  
Assistant Attorney General  
for Administration

SUBJECT: Lautenberg Amendment Follow-up

PURPOSE: To advise you of the latest status of the activities by Department components to implement your December 5, 1996 directive concerning the disqualification of certain individuals to carry or possess firearms.

TIMETABLE: None.

DISCUSSION: In my memorandum to you dated February 19, 1997, I detailed the progress components had made in complying with your memorandum of December 5, 1996, to them to report to you within 45 days on their efforts to determine which of their employees were disqualified from carrying firearms by virtue of the 1996 amendment to 18 U.S.C. § 922(g), referred to as the "Lautenberg Amendment."

We now have virtual completion of the survey; the only employees remaining are those absent because of matters such as overseas assignment, long-term disability or training, or active duty military assignment. Based on the results to date, we expect very few, if any, further identification of disqualified members.

The results of the employee survey, to date, are:

| Component | Date report received | Percentage of employees surveyed (number contacted in parentheses) | Number of employees disqualified |
|-----------|----------------------|--------------------------------------------------------------------|----------------------------------|
| FBI       | 03/04/97             | 99.9 (10,870)                                                      | 0                                |
| EOUSA     | 03/04/97             | 100.0 (81)                                                         | 0                                |
| BOP       | 03/04/97             | 99.9 (28,485)                                                      | 80                               |
| OIG       | 03/04/97             | 100.0 (127)                                                        | 0                                |
| USMS      | 03/04/97             | 100.0 (7,029)                                                      | 0                                |
| DEA       | 02/27/97             | 100.0 (3,752)                                                      | 0                                |
| INS       | 03/04/97             | 99.2 (14,470)                                                      | 19                               |

Please let me know if there are any additional questions concerning this matter.

# Law Enforcement News

Vol. XXIII, No. 461

A publication of John Jay College of Criminal Justice/CUNY

February 14, 1997



**If you put up  
your dukes,  
prepare to  
lay down  
your arms**

Law enforcement goes ballistic over a Federal law that bars anyone convicted of domestic violence — cops included — from possessing a gun. **Page 1.**

## **A fortune in Gold(stein):**

Reap the benefits of four decades of cutting-edge police thinking — all in a candid, wide-ranging interview with the father of problem-oriented policing, Herman Goldstein. **Page 8.**

# Police careers may take a beating from Fed domestic-violence law

## Groups try to rewrite law that would strip abusive cops of their guns

By Jacob R. Clark

The Federal law passed last fall that prohibits anyone with misdemeanor domestic violence convictions from possessing a firearm is rocking law enforcement, sparking lawsuits challenging its constitutionality, forcing police agencies to conduct time-consuming background checks of officers to ensure compliance with the law, and in some cases, costing officers their jobs.

The furor over the Domestic Violence Offender Gun Ban, which was sponsored by Senator Frank Lautenberg (D.-N.J.) and passed by Congress on Sept. 28 as part of an omnibus spending bill, also has prompted police groups to lobby for changes that would make the law more palatable to police.

A lawsuit filed by the National Fraternal Order of Police on Jan. 21 seeks to block enforcement of the gun ban pending a review of its constitutionality. Arguments in the effort to get an injunction against the law were expected to begin in U.S. District Court in mid-February, said FOP executive director James O. Pasco Jr.

While many police officials say they favor the intent of the law, which is aimed at reducing the number of domestic homicides by prohibiting those with prior convictions from having access to firearms, some believe it is having an unfair, and unforeseen, impact on law enforcement.

"This issue is causing more chaos

than almost anything I've ever seen in law enforcement," said Beth Weaver, a spokeswoman for the National Association of Police Organizations, which has been alerting police agencies about the law while lobbying legislators to support one of two proposed changes to the law.

Pasco said the amendment directly threatens law enforcement careers by penalizing people convicted of the spousal abuse without taking into account that they may have successfully dealt with their domestic problems.

"Pre-employment screening and the scrutiny law enforcement officers face on the job is such today that it's unlikely that anyone who habitually abuses his or her spouse or family member is a police officer," Pasco told Law Enforcement News. "That doesn't mean there's not a problem. But to the extent that there are officers with previous convictions, in all probability they're good people who made a mistake at one time or another."

The FOP is also lobbying Congress to amend the law and make the firearms disability provision apply "prospectively to offenders — those who were convicted after enactment, not persons who 15 or 20 years ago got into an argument with their spouse," said Gilbert G. Gallegos, the National FOP's president.

Rita Smith, the executive director of the National Coalition Against Do-

mestic Violence, doesn't buy Gallegos's argument. "There's absolutely no way that there would have been minor convictions 20 years ago," she told LEN. "We did not get domestic violence convictions 20 years ago. It would have to have been a felony-level assault. And those people need to be considered dangerous."

At least two lawsuits were filed this month, in Atlanta and Los Angeles, by police unions with members who have been reassigned or face losing their jobs outright due to the gun law.

The Association for Los Angeles County Deputy Sheriffs last month filed a Federal lawsuit seeking an injunction against the ban after Sheriff Sherman Block relieved three deputies of their peace officer status in December and reassigned them to administrative duties. Richard Shinee, an attorney who represents the union, said the lawsuit also seeks restoration of the deputies' peace officer status.

A similar lawsuit also was filed by the Southeast regional office of the International Brotherhood of Police Officers in U.S. District Court in Atlanta on Dec. 31. The suit was filed after Fulton County, Ga., Sheriff Jacqueline Barrett terminated three deputies and reassigned "several others" to comply with the ban, according to Chip Warren, national vice president of the IBPO, which represents 6,000 municipal police officers in the Southeast.

Both the Los Angeles and Atlanta lawsuits are challenging the law on its procedural and substantive due process, equal protection and retroactive provisions. The IBPO lawsuit, which seeks both temporary and declaratory relief against the law, also alleges that Congress exceeded its authority to regulate interstate commerce when it passed the law by prohibiting officers "from transporting or carrying guns anywhere, including outside their own jurisdictions," added Warren, who is a retired Atlanta police officer.

Deputy U.S. Attorney General Jamie Gorelick, who recently announced her resignation [see Page 4], has asked Federal agencies whose employees are authorized to use firearms to report to her on its impact. Federal law enforcement officers are being asked "to inform us in writing" about any prior domestic violence misdemeanor convictions, Justice Department spokesman Gregory King told LEN.

"Those with convictions are being asked to turn in their firearms," he said. "We expect to know how much of an impact it's had in the next few weeks."

Meanwhile, two proposals have been introduced in Congress to alter provisions of the gun ban and make it more favorable to law enforcement.

A proposal by Representative Bart Stupak (D.-Mich.) would partially re-

Continued on Page 14

***Above the law?***

# Domestic-violence gun ban riles cops

Continued from Page 1

instate the exemption provided for law enforcement under the 1968 gun control act by providing an "official use" exception that would apply to on-duty police officers and the military.

Some critics, however, say that the exemption might be perceived as a special right. "We're not looking for special protections," said Buffalo, N.Y., Police Commissioner Gil Kerlikowske, the current president of the Police Executive Research Forum.

"I'm not sure I see a case for exempting law enforcement officers," added Lawrence Sherman, the chairman of the School of Criminal Justice at the University of Maryland who has conducted landmark research on police response to domestic violence. "Police, like anyone else, are at greater risk of committing homicide if they have a domestic violence conviction. If somebody has been convicted, even a long time ago, I think there's a serious question about whether we want a gun to be in that home."

Ms. Smith of the National Coalition Against Domestic Violence, which lobbied for the gun ban, said her organization opposes any effort to change the statute.

"It's not surprising to me that there has been resistance by law enforcement to this issue," she told LEN. "But we were clear when we supported the bill that it needed to affect everyone, that there wouldn't be any special classes or exemptions to this issue."

"We believe in this law; we believe it will actually prevent murders," Smith added.

Another proposal, introduced by Representative Bob Barr (R-Ga.) and supported by the FOP, would have the ban apply only from its date of enactment. In effect, the change would address concerns that the law as it now written violates the Constitution's ban

"It's not surprising to me that there has been resistance by law enforcement to this issue, but we were clear when we supported the bill that it needed to affect everyone."

— Rita Smith of the National Coalition Against Domestic Violence

on ex post facto laws.

"The vast majority of all laws passed by Congress apply only to offenses committed after the new law goes into effect," Barr wrote recently in "Subject to Debate," a PERF publication. "The Lautenberg law should be considered no differently, especially since specific due-process provisions were written into the law, including the right to an attorney and the right to a jury trial."

Barr's proposal has been criticized by NAPO executive director Robert Scully, who said the effort "to fix the situation retroactively is too little, too late." Barr, Scully noted, "is responsible for deleting the 'official use' exception" from the Lautenberg bill before it was attached to the spending measure.

Hearings on the bills were to be convened by the House Subcommittee on Crime on Feb. 26.

Far from the halls of Congress, meanwhile, police agencies are left to grapple with application of the law, ever since the Bureau of Alcohol, Tobacco and Firearms sent out an advisory last fall informing them that they must comply with it. How the law will be enforced — and which Federal agency would be charged with the task — is still unclear, sources told LEN. "It's an enforcement nightmare," Pasco said.

Most police agencies are conducting massive, time-consuming reviews of personnel records to determine whether any officers are in violation of the law. But that may not be enough to identify all those officers who might be affected by the gun ban, said Sherman.

"As a matter of computerized

record-keeping, I think it will be difficult to [search for past convictions] retroactively with any degree of accuracy," Sherman noted, because conviction records currently do not include information about victim-offender relationships. "The implementation of the entire law rests on the ability to do these kinds of checks."

No one knows how many law enforcement officers might be adversely affected by the law, but anecdotal reports suggest that the number could be substantial.

Norwich, Conn., Police Chief Richard Abele said he was forced to relieve one officer of his gun and put him on desk duty. "My main objection is that it's not fair," said Abele, whose agency has 92 officers. "There's no longer any problem; he's not even married to the other party anymore."

Abele's quandary is being experienced by police chiefs nationwide, observed Kerlikowske. "There are domestic-violence cases involving police officers where the job or the firearm never figured in what occurred, where the incident was very, very minor. But all of these cases are being painted with one broad brush by the law, and I think that makes it a lot more difficult for police executives.... It's a no-win situation."

The New York City Police Department is said to be investigating at least 125 officers who may be affected by the law. The department does not currently hire applicants with misdemeanor domestic-violence convictions but any officers found to be covered by

the law's retroactive provision would be fired. "Why would you want to keep somebody on the payroll who can't function as a police officer for their career?" a high-ranking police official told The New York Daily News.

Some officers initially affected by the law later were reinstated after officials determined that they were not considered to have been convicted under the law. The statute does not apply to persons whose domestic-violence conviction was expunged or set aside, or who received a pardon or had their civil rights restored — unless the pardon, expungement or restoration of rights "expressly provides that the person may not ship, transport, possess or receive firearms."

Three of five Minneapolis officers who turned in their guns were reinstated after having pleas vacated or expunged, said Police Chief Robert Olson.

Officers affected by the law often are being transferred to administrative duties or other assignments that do not require them to carry firearms. A Denver police officer and a detective who fell under the law's provisions were served with a written order barring them from carrying firearms or ammunition "in any capacity, on or off duty, until further notice," said Lieut. John W. Lamb, who heads the Police Department's civil liability bureau. The two now are assigned to non-line duties, Lamb said.

The department is taking a "wait-and-see" attitude with the hope that the situation is resolved within the next few months, Lamb added. But unless

changes are made soon, he said, "we'll have to take action" against the two officers.

"We're not going to rush to separate these officers from the organization," said Lamb. "But the department has no unarmed positions, so if this law is not changed, it will be career-ending for those affected by it. If you can't carry a gun, you can't do your job."

The FOP is advising its members to consult its attorneys before they answer any questions directed by employers about domestic violence, said Pasco. "And we would urge chiefs to be as disciplined in their approach to this problem as they would in their approach to problems with criminal defendants, and show the same respect for law," he added.

Not all police executives are troubled by the gun ban, and most favor the statute's intent — to reduce the number of domestic homicides.

"I think it's a good law," said Austin, Texas, Police Chief Elizabeth Watson, who said a recent records check indicated that none of that city's 1,000 officers are yet affected by the statute. "I'm very supportive of sanctions regarding domestic violence. We need to take advantage of every opportunity to deliver a message, not only as police officers, but as a community, that we need to be intolerant of the activity."

## Speak your mind!

LEN welcomes commentaries from readers on topical criminal justice issues, for the newspaper's "Forum" section. Send contributions to the Editor, or call (212) 237-8442 for more information



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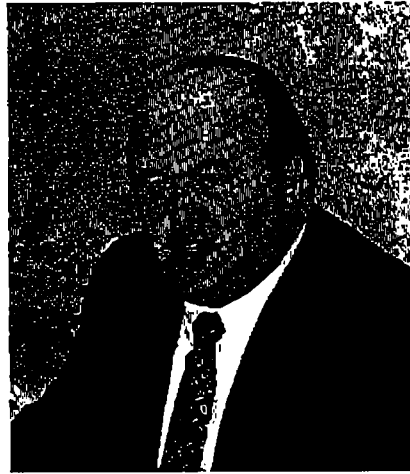
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PAGER ]

# Message From The Executive Director

**W**hat is the old saying about pay backs being tough? Certainly the police community throughout this country has recently seen just how tough it can be by seeing fellow officers relieved of their guns and likewise their duties because they previously had been convicted of a domestic related misdemeanor assault. I bring up the "payback" concept because most police lobbyists in Washington, D.C. are convinced that this action was done in retaliation for national police groups' unwillingness to join the N.R.A. in repealing the Brady Law and the military assault weapon prohibition and generally not being supportive of a lot of their issues. Before you dismiss this notion, follow along for a few paragraphs.

At the request of domestic abuse advocates from his state, New Jersey Senator Frank Lautenberg (D) introduced and passed through the senate a bill which was designed to curb domestic violence by denying gun ownership to persons convicted of domestic assault. The bill that passed through the senate and went over to the House of Representatives left in tact the approximate twenty-nine year old exemption for police officers and the military. Upon arrival in the house, Georgia Representative Bob Barr (R), an outspoken and some would suggest paid for representative of the National Rifle Association began his mischief. Simply put, he deleted this long standing exemption and the bill was quickly stuffed into the Omnibus Consolidated Appropriations Act of 1997. You might recall this appropriations bill was one that was sent to the president to keep the government operating. It was a huge spending bill. Simple enough to do and as a consequence hundreds of police



DENNIS J. FLAHERTY

officers in the country have their livelihoods now in jeopardy.

Now the Bureau of Alcohol Tobacco and Firearms are charged with the responsibility of enforcing this new federal gun control law. When people realized what Congressman Barr had done, he quickly stated that it was never his intent to have the law applied retroactively. Nice try congressman, but being yourself

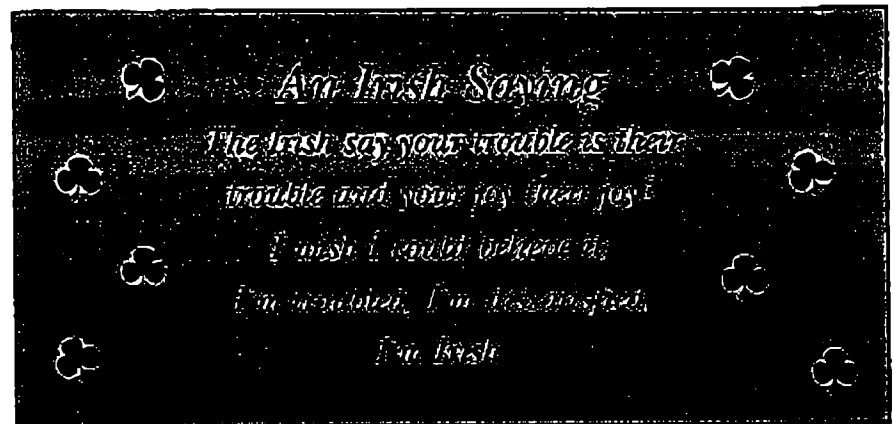
learned in the law and in fact a former U.S. Attorney, I am not sure you can stand before the nation and plead ignorance to your actions. You had to know exactly what you were doing. You had to know the Gun Control Act has always been applied retroactively.

Congressman Barr was one of the most outspoken critics of federal law enforcement and was the N.R.A.'s point man during congressional hearings following Waco and Ruby Ridge. In fact, he wanted to abolish A.T.F. and now they are stuck enforcing his prank. It is interesting to note that reports in the office of the

*I do not know of anyone in our industry in this state or anywhere else in the country that condones domestic violence and in fact does not see it as a serious problem facing our society. It is violence that is eroding the fabric of our civilization and it is intolerable behavior when it is displayed by anyone especially a police officer. But our industry should be working to identify stressed officers and the emphasis should be on treatment and rehabilitation. That cannot be effective when an officer is fired at the same time.*

federal elections committee show that during the period of 1993-94, Congressman Barr received \$4,950.00 in donations from the N.R.A. and in 1995-96 \$7,393.00. Most recently however is that during

that period he also received independent expenditures from the  
(continued on next page)



## Message From The Executive Director cont.

N.R.A. amounting to \$51,758.00. That sure seems like a lot of money for an organization to invest in one congressman. Maybe not however, if they can get him to advance their issues.

Now of course, Congressman Barr has recently introduced a bill that would simply remove the retroactivity portion of this law. Well I suppose we should applaud him for that, but what we really need restored is the exemption that existed prior to his work.

Why should police officers be the only occupation in America that lose their jobs if convicted of this misdemeanor offense? The exemption which again has been in place since the law was put into affect in 1968 and if restored would allow officers to still possess firearms while engaged in their duties.

I do not know of anyone in our industry in this state or anywhere

else in the country that condones domestic violence and in fact does not see it as a serious problem facing our society. It is violence that is eroding the fabric of our civilization and it is intolerable behavior when it is displayed by anyone especially a police officer. But our industry should be working to identify stressed officers and the emphasis should be on treatment and rehabilitation. That cannot be effective when an officer is fired at the same time.

So to Congressman Barr, if you had a hidden agenda, which most people in the know in police politics claim, then I guess you can laugh your way all the way to the N.R.A. office for another check. You obviously are not a police supporter when your solution to rectify the problem only deals with retroactivity. Because if you had any understanding of our business you would know that for

a police officer, a gun is a tool of the trade and when you take that from them, so goes their livelihood.

Recently, Congressman Bart Stupak (D) from Michigan and himself a former Michigan State Trooper introduced legislation which will reinstate "the official use" exemption for law enforcement. Personally, I feel it would behoove all of you to contact your congressmen's office and urge them to sign onto his bill, it is H.R. 445.

Stay tuned to this issue as when congress returns to work in February, this will be on their agenda. There will be hearings on this topic in the judiciary committees unlike what occurred on the floor of the House of Representatives when without a minute of discussion, Congressman Barr fired the shot heard around the police community.

## ANNUAL LEGISLATIVE CONFERENCE

It is that time of year and our elected representatives have already left their homes and are meeting at the State Capitol. As always, there will be a number of issues discussed that impact your job, your families and your pocketbooks. It is absolutely imperative that you know what these issues are.

Join officers from around the state and attend the Eighteenth Annual Legislative Conference which is being held on Saturday, February 8, 1997 at the Radisson Inn Town Square, 411 Minnesota Street in downtown St. Paul. The all-day seminar which will be approved for P.O.S.T. continuing education credits will see appearances from the Speaker of the House, the Attorney General as well as many other informative people discussing current police issues.

Please complete the registration form contained on page 4 of this magazine and send it immediately to the MPPOA office.

Anyone needing a sleeping room the night before should call the hotel directly at (612) 291-8800 and ask for the MPPOA rate.

There will be a hospitality room at the hotel, the evening before and anyone attending the conference is welcome to stop by.

## Exclusive to the Minnesota Police Journal

# NEW FEDERAL FIREARMS REGULATIONS

**L**ast legislative session, Congress amended the federal law that regulates the lawful transfer and possession of firearms and ammunition. Congress changed the law so that an individual's conviction of a "misdemeanor crime of domestic violence" would prohibit that individual from possessing any firearms or ammunition and prohibit others from licensing or transferring firearms or ammunition to that person. This law has been applied retroactively and it has been in effect since September 30, 1996.

### APPLICATION TO PEACE OFFICERS

Congress clearly intended for this law to apply to peace officers. The old law allows for a general exception for firearms and ammunition that are 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." This general exception, however, does not apply to individuals convicted of a "misdemeanor crime of domestic violence."

### DISPOSITION OR POSSESSION OF FIREARMS AND AMMUNITION

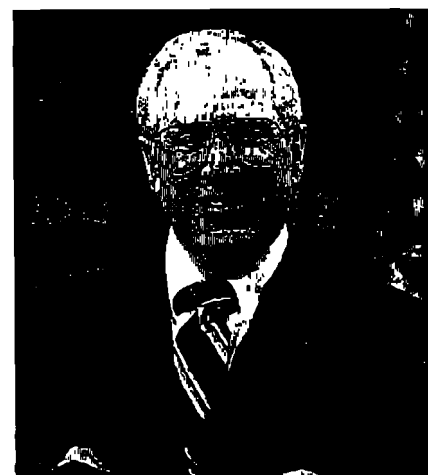
The new law provides that no one can sell or otherwise dispose of any firearms or ammunition to any person who has been convicted in any court of a "misdemeanor crime of domestic violence." Therefore, if your department or agency provides any firearms or ammunition to its employees, it will be in viola-

tion of the new federal law if it distributes them to an individual who has been convicted of a "misdemeanor crime of domestic violence." Similarly, the new law provides that it is unlawful for any person, who has been convicted in any court of a "misdemeanor crime of domestic violence," to ship, transport, receive or possess any firearm or ammunition, whether issued for duty or privately owned. If there is a chance that this law applies to a peace officer, it is important to thoroughly investigate it. Any violation of this law can result in a fine and/or imprisonment up to 10 years for both the department or agency and the individual.

### WHAT IS A "MISDEMEANOR CRIME OF DOMESTIC VIOLENCE?"

The new federal law defines "misdemeanor crime of domestic violence" as either a federal or state misdemeanor crime that *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.*

To be considered convicted of such an offense, a person must: (1) have been represented by counsel or knowingly waived representation; and (2) have been



HUBERT H. HUMPHREY III

## ★ ATTORNEY GENERALS REPORT

tried by a jury or knowingly waived trial by jury by a guilty plea or otherwise.

Because this is a new federal law that has yet been interpreted by any court, we have been working with the Bureau of Alcohol, Tobacco and Firearms in an effort to discover how it will be applied. The ATF interprets the new law to mean that the crime itself need not specifically include the words "domestic violence." For example, a conviction for assault will count as a conviction as a "misdemeanor crime of domestic violence" if the victim of the crime was a spouse of the perpetrator. Therefore, it is necessary to look to both the statutory language of the crime as well as the facts of the case to determine whether one has been convicted of a "misdemeanor crime of domestic violence."

As of the date that this article was submitted, it is not yet clear under which Minnesota criminal statutes convictions will count as "misdemeanor crimes of domestic violence." For example, the ATF is currently reviewing the disorderly conduct statute to advise

(continued on next page)

**Attorney General's Report cont.**

whether it will consider convictions of this crime as "misdemeanor crimes of domestic violence."

**EXCEPTIONS TO THE NEW LAW**

Even if an individual has been convicted of a "misdemeanor crime of domestic violence," there are exceptions to the federal law that may apply. The law provides that:

*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.*

Therefore, an individual can seek relief from the new federal law by obtaining a state expungement or pardon. It is important to keep in mind, however, that both expungements and pardons are extraordinary remedies and therefore infrequently granted; both also require rather complex application procedures.

**EXPUNGEMENTS**

Generally, if an individual has been convicted of a misdemeanor crime in the State of Minnesota, he or she can apply for an expungement in the county where the criminal prosecution occurred. An expungement is a "sealing" of a court or arrest record granted by a judge. Law enforcement agencies, prosecution or correctional authorities may seek an order to re-open a sealed case for the purpose of a criminal investigation, prosecution or sentencing. Also, the

records may be re-opened for the purposes of evaluating a prospective employee in a criminal justice agency without a court order.

A judge may grant an expungement only upon clear and convincing evidence that the benefit to the individual applying for the expungement outweighs the potential disadvantages to the public and public safety in sealing the record and enforcing that order. Applications for expungements take time — a hearing is held no sooner than 60 days after service of the application and an order will not go into effect until 60 days after it is filed. Importantly, if a person was convicted of a "crime of violence" as defined in Minnesota Statute section 624.712, subdivision 5 (1996), an expungement will not entitle that person to ship, transport, possess, or receive a firearm until ten years have elapsed since the sentence was discharged and during that time the person was not convicted of any other crime of violence. For more information on expungements, see Minnesota Statute ch. 609A (1996) and contact Assistant Attorney General Jeff Lebowksi (612-297-5908).

**PARDONS**

Generally, if an individual was convicted of a misdemeanor crime in the State of Minnesota, he or she could apply for pardon extraordinary after: (1) the person has served the sentence imposed by the court and has been discharged of the sentence; (2) five years have elapsed since the sentence was discharged (for "crimes of violence," ten years must have elapsed); and (3) the person has not been convicted of any other crime. After a pardon is granted, the conviction is set aside and nullified; the person shall never after that be required to disclose the conviction at any time or place other than in a judicial proceeding or as part of

the licensing process for peace officers.

The board of pardons (consisting of the governor, the chief justice of the supreme court and the attorney general) may grant a pardon if they unanimously determine that the person is of good character and reputation. Again, if a person was convicted of a "crime of violence" as defined in Minnesota Statute section 624.712, subdivision 5, a pardon will generally not entitle that person to ship, transport, possess, or receive a firearm until ten years have elapsed since the sentence was discharged and during that time the person was not convicted of any other crime of violence. An individual must file the application for a pardon with the secretary for the board of pardons not less than 60 days before the board's meeting. The board meets twice a year, in March and September; applications and supporting materials must be received by the first of January or July for consideration. For more information on pardons, see Minnesota Statute ch. 638 (1996) and contact Nacole Hendren at the Department of Corrections (612-642-0284) (be prepared to provide the date of conviction and date of expiration of sentence).

**AMENDMENTS**

Our office is working with Senator Paul Wellstone to draft proposed amendments to this federal law. One important proposed amendment would change the law so that it applies prospectively rather than retroactively. It seems that these amendments will be moving swiftly through Congress; they may be proposed as early as January 7, 1997. For more information on these amendments, contact Senator Paul Wellstone's office (612-645-0323) or the office of the Attorney General at (612-296-6196).

## As Street Cops See It

Any doubt as to why so many street cops hold politics and politicians in such low regard should have vanished after a reading of Sen. Frank R. Lautenberg's defense of his domestic violence gun ban, more commonly known as the Lautenberg amendment ["No Guns for Wife-Beaters," op-ed, April 3].

Sen. Lautenberg wants the public to believe that his law will protect the innocent against the violent. It won't.

Having spent 13 years pulling street patrol in New York, I've found the only way to control criminal violence is to control criminals. Cops don't learn this concept studying political science or the law. We learn it on the street, up close and personal, where things get ugly.

If a man wants to beat his spouse to a pulp, he isn't going to pay attention to Sen. Lautenberg's firearms ban. And because most spousal murders and assaults are committed by bludgeoning—punching and kicking—Mr. Lautenberg's amendment fails to help most domestic violence victims.

The other point the Lautenberg amendment misses is that wife and child beaters should be tried and convicted as felons. It's long been a federal

offense for felons to possess a firearm or ammunition. And such violent degenerates have no place in society, and certainly not in law enforcement or the military.

But until we lock up violent felons for a long time and make life in prison tougher than life on the outside, we won't make a dent in violent crime rates or reduce domestic abuse. Until we hold the purveyors of criminal violence responsible for their despicable acts and exact swift, certain and serious punishment, they will still sneer at our laws and continue to rob, rape and kill.

As long as excuse-makers, such as Sen. Lautenberg, continue to blame violence on everything from guns to dysfunctional families rather than holding a criminal responsible for his actions, nothing will change, and many innocent Americans will continue to suffer.

JAMES J. FOTIS  
Falls Church

*The writer is executive director of the Law Enforcement Alliance of America, an organization of 50,000 police officers concerned with criminal justice reform.*

NRA  
Cover group

## Justices review school-church line

### Court expected to reverse its 1985 decision

By Tony Mauro  
USA TODAY

The Supreme Court takes up a case Tuesday that could pave the way for dramatically more government aid to religious schools.

The justices will be asked to reverse a decision made just 12 years ago that bars using federal funds to give remedial education to students inside parochial schools.

The 1985 decision, viewed by many as the high-water mark in the separation of church and state, has been an obstacle in the path of school voucher programs that give parents the choice of using government money to send their kids to parochial schools.

If the high court reverses that precedent, voucher programs currently under legal challenge in Milwaukee, Cleveland and Vermont would likely be approved — and more voucher plans would follow.

"Tuesday's arguments will be the last tune-up before the court takes up the school choice issue," says Clint Bolick of the Institute for Justice,



"There should be no constitutional problem in supporting these programs."

— Clint Bolick,  
Institute for Justice

which has defended voucher plans that include parochial schools. "There should be no constitutional problem in supporting these programs."

The court's 1985 decision in *Aguilar vs. Felton* was based on its view that there should not be "excessive entanglement" between church and state in educational programs.

The ruling prompted school systems nationwide to spend millions of dollars on ways to provide so-called Title I instruction to qualified parochial school students.

The Title I program, with a \$7.2 billion annual budget, is intended to give help in math and reading to students in low-income areas, no matter which school they attend.

About 3% of the money, \$216 million, goes to students who aren't in public schools. More than 6 million students nationwide are eligible.

"The rule of *Aguilar* amounts to discrimination against religion. It has hurt real people with real problems," says University of Minnesota law professor Michael Paulsen, who filed a brief in the case.

New York City, which mounted the main challenge to the 1985 ruling, says it alone has spent \$83 million to comply with its command that Title I instruction be conducted away from religious schools. City officials say the money could be put to better uses.

The city leases hundreds of mobile classrooms, which are parked at the curb outside parochial schools. Students leave their schools for instruction in the trailers or vans, which usually lack bathrooms and insulation from street noises.

Cheryl Malcousu says her daughter Alicia, 11, has to leave St. John the Baptist

School, which is in an unsafe area in the Bedford-Stuyvesant section of Brooklyn, to receive much-needed math help in a van parked around the corner.

"Are we being jeopardized just because my daughter is in parochial schools?" asks Malcousu, one of the parents challenging the ruling. "Are they telling us we have to go to public school to get an education? I want the choice."

The Supreme Court seems likely to give her that choice. Since the 5-4 *Aguilar* decision, four of the five justices in the majority have been replaced. And five of the current justices, a majority, have hinted they are itching to overturn *Aguilar*.

*Aguilar* should be "overruled at the earliest convenience," Justice Antonin Scalia said in 1994. The Clinton administration also wants the decision overturned.

"I don't know of anyone who thinks Title I kids will still be in the vans by summertime," says Marc Stern of American Jewish Congress, who supports *Aguilar*. "Our side has lost. The only question is how badly."

Stern favors allowing public-school teachers to give the instruction inside religious schools, but only if the teachers are selected and supervised by public school officials, and only if the classrooms are stripped of religious symbols.

Sunday, April 6, 1997

Richmond Times-Dispatch  
APR 6, 1997

# Law enforcers struggle with gun law implications

## Women's groups pushed for expansion of prohibition

BY MARK JOHNSON

MEDIA GENERAL NEWS SERVICE

### WASHINGTON

Some gun enthusiasts long have prophesied about a day when the federal government orders citizens to turn in their guns.

Now there is a group of thousands of Americans for whom that prediction has turned into reality.

"They should immediately but lawfully dispose of their firearms to a third party, such as their attorney, their local police agency or a federal firearms dealer," said Peter L. Gagliardi, deputy associate director for enforcement at the Bureau of Alcohol, Tobacco and Firearms.

Exactly who Gagliardi is talking about is a question confusing law enforcement agencies and sparking quarrels among normally chummy police and women's groups. But at the very least, thousands of people — including hundreds of police officers and soldiers — lost their right to possess a firearm last fall.

In September Congress passed legislation stripping gun rights from anyone convicted of a domestic violence misdemeanor.

"The [National Rifle Association] is always called paranoid," said Tanya Metaksa, the NRA's chief lobbyist. "[But] we're seeing more and more classes of people being slid under the '68 Gun Control Act as prohibited from owning a gun."

### Women's groups support law

On his train trip to last year's Democratic National Convention, President Clinton proposed prohibiting anyone ever convicted of a domestic violence misdemeanor from buying or possessing a firearm. Wife beaters and child abusers shouldn't have guns, Clinton said. Congress passed the legislation within weeks.

Felons have been barred from owning guns since 1968. A misdemeanor, however, is a less serious offense that can range from "soaping" a window at Halloween to urinating in public to hitting somebody. The new law includes only misdemeanor convictions that involve domestic violence.

Clinton, supported by women's groups, extended the gun prohibition to these lesser offenses, citing the repetitive and escalating nature of domestic violence. Before public attention focused on domestic violence, police officers called to a home — say, the Jones' house — would discover that Mr. Jones had just hit his wife and simply would tell him to walk around the block, said Ronald E. Hampton, executive director of the National Black Police Association.

"Eventually, we took Mrs. Jones out in a body bag," Hampton said.

Almost immediately after Clinton signed the new gun ban into law, questions arose about its fairness and enforceability.

A husband or wife in the midst of a bitter divorce 10

said. While there is no national tabulation of domestic violence misdemeanors, one indicator is the number of police officers affected by the new law. Law enforcement officers prohibited from possessing a gun could be suspended from duty.

Bernard H. Teodorski, national vice president of the Fraternal Order of Police, told a congressional committee last month that the group still was researching how many officers had been convicted of domestic violence misdemeanors.

### Police groups upset about implications

This consequence of the law has created tension between police groups who don't want to destroy officers' careers, and women's advocacy organizations whose "No Guns for Wife Beaters" slogan signifies their refusal to allow exceptions to the law.

Among gun control supporters, Handgun Control, Inc. officials said the law's unintended consequences and any possible changes need to be examined. The NRA, on the other hand, said the solution is not more gun bans but to stop plea-bargaining domestic violence cases down to a misdemeanor charge. True domestic violence should be prosecuted as a felony, which would bring a tougher penalty and prohibit the abuser from owning a gun, said Metaksa, of the NRA.

"You also have problems with how records are kept," said Special Agent John Limbach, an ATF spokesman.

Until the past few years, criminal records usually didn't distinguish between misdemeanor convictions for striking a spouse and hitting a neighbor with a snowball.

"We don't know if [the convictions] are domestic violence assaults," said Alan L. Wallis, chief of police in Renton, Wash., after appearing at a Handgun Control event.

Even current records are not uniform among different counties or states, ATF officials said. The new law requires police to determine if the domestic violence offender received a jury trial and was represented by a lawyer. That means police likely would have to search records at the courthouse where the trial took place. Officials at the California-based National Consortium for Justice Information and Statistics said they could not predict the time or cost of developing the capability to quickly and reliably identify people who the domestic violence gun ban affects.

### House addresses enforcement

The complexity of the law "suggests that several years and hundreds of millions of dollars will be required in order to build this capability," said Gerry Wethington, information systems director for the Missouri Highway Patrol and a representative of the justice-information consortium.

The House subcommittee on crime is considering several changes to make the new law easier to enforce

LAUTENBERG

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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

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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**

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 | TOTAL SUPPORT: | 61% |
| 23% | Somewhat support |                |     |
| 12% | Somewhat oppose  | TOTAL OPPOSE:  | 39% |
| 27% | Strongly oppose  |                |     |

6 Dec 1996 17:33

FROM THE OFFICE OF THE  
Voice (202) 225-2931  
Fax (202) 225-2944

Page 2 of 2  
FBI  
FBI-6517

DAW FBI SAN → LANCIA  
NEWS FROM U.S. REPRESENTATIVE BOB BARR

FOR IMMEDIATE RELEASE:  
THURSDAY, DECEMBER 6, 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 chairman 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."

-- 30 --

LAUTENBERG

February 25, 1997

Dear Mr. Fois,

As you know, with the passage of the Domestic Violence Offender Gun Ban in 1996, people convicted of misdemeanor domestic violence offenses are prohibited from purchasing or possessing guns. Several bills to dilute this law have been introduced thus far in the 105th Congress: S. 262, introduced by Sen. Wellstone, H.R. 26, introduced by Rep. Barr, and H.R. 350, introduced by Rep. Stupak.

We are writing to you on behalf of the millions of women and children who are battered each year in this country to ask the Clinton Administration to oppose these bills and stand by the effort to ensure that convicted abusers do not have access to guns. As advocates who work to prevent and reduce family violence, we believe that:

- \* Because weapons are used in 30 percent of domestic violence incidents, laws which prohibit convicted batterers from possessing guns are absolutely essential to protect the lives and preserve the health of battered women and their children.
- \* Police officers and military personnel who are convicted of domestic violence offenses should be subject to the same laws that govern other individuals.
- \* The lives of the many women whose abusers have been convicted of domestic violence misdemeanor offenses over the last decade may be endangered if the law is only applied prospectively.

Therefore, the prohibition on gun ownership for those convicted of domestic violence misdemeanors should be maintained. In addition, the official use exemptions for individuals convicted of felony domestic violence offenses and individuals under restraining orders for domestic violence should be eliminated.

We applaud the law enforcement agencies all across America for their efforts on behalf of battered women and hope they will work with us to ensure that their colleagues are held to the same standards as other citizens in our efforts to reduce gun violence and deaths.

The lives and safety of millions of women and their children depend on preserving current law and strengthening it by deleting the official use exemptions. We urge your support on these issues to reaffirm the Congress's strong commitment to preventing violence against women.

Sincerely,

Alternatives for Battered Women, New York  
American Medical Women's Association  
American College of Nurse Midwives  
Ayuda  
Center for Women Policy Studies

To: Andrew Foiss

Date: 2/25/97 Time: 13:30:38

Page 2 of 2

Colorado Coalition Against Domestic Violence  
Domestic Violence Project, Safe House, Arbor, Michigan  
Family Domestic Violence Services, Ulster County, New York  
Family Violence Prevention Fund  
Feminist Majority  
Florida Coalition Against Domestic Violence  
Haven in Oakland County, Michigan  
Hawaii State Coalition Against Domestic Violence  
Indiana Coalition Against Domestic Violence  
Iowa Coalition Against Domestic Violence  
Jewish Women International  
LifeSource Consultants, St. Louis, Missouri  
Lutheran Office for Governmental Affairs, ELCA  
Massachusetts Coalition of Battered Women's Service Groups  
Joan Meier, Director, Domestic Violence Advocacy Project, George Washington University Law School  
(\*organization listed for identification only\*)  
Mennonite Central Committee U.S., Women's Concerns  
Missouri Coalition Against Domestic Violence  
Nassau County (NY) Coalition Against Domestic Violence  
National Black Women's Health Project  
National Coalition Against Domestic Violence  
National Council of Jewish Women  
National Network to End Domestic Violence  
National Woman's Party  
National Women's Law Center  
New Mexico Coalition Against Domestic Violence  
New York State Coalition Against Domestic Violence  
New York State Spanish Domestic Violence Hotline  
North Carolina Coalition Against Domestic Violence  
NOW Legal Defense and Education Fund  
Older Women's League  
Orange County Safe Homes Project, Inc., New York Oregon Coalition Against Domestic and Sexual Violence  
Park Slope Safe Homes Project, Brooklyn, New York  
Physicians for Social Responsibility  
Presbyterian Church (USA), Washington Office  
Shelter, Incorporated, Tennessee  
South Carolina Coalition Against Domestic Violence and Sexual Assault  
South Dakota Coalition Against Domestic Violence  
Tennessee Task Force Against Domestic Violence  
Union of American Hebrew Congregations  
Unitarian Universalist Association  
Women's Action for New Directions  
Women's Aid Service, Mount Pleasant, Michigan  
Women's Coalition of St. Croix  
Women's Project, Little Rock, Arkansas  
YWCA of the U.S.A.

**DRAFT \* 2**

**STATEMENT OF DAVID R. LOESCH**

**DEPUTY ASSISTANT DIRECTOR**

**CRIMINAL JUSTICE INFORMATION SERVICES DIVISION**

**FEDERAL BUREAU OF INVESTIGATION**

**FOR THE SUBCOMMITTEE ON CRIME**

**COMMITTEE ON THE JUDICIARY**

**UNITED STATES HOUSE OF REPRESENTATIVES**

**MARCH 5, 1997**

Draft

2

GOOD MORNING, MR. CHAIRMAN. THANK YOU FOR INVITING ME TO APPEAR BEFORE YOUR COMMITTEE TO PRESENT INFORMATION ABOUT THE FBI'S WORK TO IMPLEMENT THE BRADY HANDGUN VIOLENCE PREVENTION ACT. I HAVE WITH ME TODAY MR. DEMERY R. BISHOP, SECTION CHIEF, AND MR. EMMET A. RATHBUN, UNIT CHIEF, OF THE PROGRAMS DEVELOPMENT SECTION.

I WOULD FIRST LIKE TO BEGIN WITH OUR STRATEGY TO DEVELOP THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM, WHICH I WILL REFER TO AS THE INSTANT CHECK SYSTEM. THIS WILL BE FOLLOWED BY INFORMATION ON OUR PROGRAM TO FLAG CRIMINAL RECORDS TO IDENTIFY CONVICTED FELONS, THE GUN BAN FOR INDIVIDUALS CONVICTED OF A MISDEMEANOR CRIME OF DOMESTIC VIOLENCE, AND FINALLY THE STATUS AND TIME LINE FOR IMPLEMENTING THE INSTANT CHECK SYSTEM.

#### **STRATEGY TO DEVELOP THE INSTANT CHECK SYSTEM**

AS YOU KNOW, THE BRADY ACT REQUIRES THE ATTORNEY GENERAL TO ESTABLISH AN INSTANT CHECK SYSTEM TO SUPPLY INFORMATION ON WHETHER RECEIPT OF A FIREARM BY A PROSPECTIVE TRANSFEREE WOULD VIOLATE SECTION 922 OF TITLE 18, UNITED STATES CODE, OR STATE LAW. THE ATTORNEY GENERAL ASKED THE FBI TO SUPERVISE THE DEVELOPMENT AND OPERATION OF THE INSTANT CHECK SYSTEM.

OUR STRATEGY FOR DEVELOPING THIS SYSTEM HAS BEEN TO MAKE USE OF EXISTING SYSTEMS WHICH INCLUDE THE NATIONAL CRIME INFORMATION CENTER (NCIC), THE FBI CRIMINAL HISTORY FILES, AND STATE CRIMINAL JUSTICE INFORMATION SYSTEMS.

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IMMEDIATELY AFTER THE BRADY ACT WENT INTO EFFECT, WE ESTABLISHED A TASK GROUP CONSISTING OF EXPERIENCED LOCAL, STATE, AND FEDERAL LAW ENFORCEMENT OFFICIALS TO GUIDE US IN THE PLANNING AND DESIGN OF THE INSTANT CHECK SYSTEM. ADDITIONALLY, THE WORK RESULTING FROM THE TASK GROUP EFFORT WAS COORDINATED WITH THE CRIMINAL JUSTICE COMMUNITY THROUGH PERIODIC MEETINGS WHICH RESULTED IN THE APPROVAL BY THAT COMMUNITY OF A CONCEPT OF OPERATIONS FOR THIS SYSTEM.

PURSUANT TO SECTION 103 (E) (1) OF THE BRADY ACT, THE ATTORNEY GENERAL HAS THE AUTHORITY TO SECURE INFORMATION DIRECTLY FROM GOVERNMENT AGENCIES FOR INCLUSION IN THE INSTANT CHECK SYSTEM, WHEN SUCH INFORMATION WOULD PROHIBIT A PROSPECTIVE TRANSFEREE FROM POSSESSING A FIREARM. THE BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS IS ASSISTING US BY ESTABLISHING REGULATIONS THAT DEFINE SPECIFICALLY WHICH PERSONS ARE PROHIBITED FROM PURCHASING FIREARMS. WITH THIS ASSISTANCE, THE FBI, WORKING WITH VARIOUS FEDERAL AGENCIES, WILL SECURE THE APPROPRIATE INFORMATION FROM EXISTING FEDERAL RECORDS. FOR EXAMPLE, WE ARE SEEKING DEPARTMENT OF DEFENSE RECORDS ON PERSONS WHO HAVE BEEN DISHONORABLY DISCHARGED, IMMIGRATION AND NATURALIZATION SERVICE RECORDS ON ALIENS, AND DEPARTMENT OF STATE RECORDS ON INDIVIDUALS WHO HAVE RENOUNCED THEIR UNITED STATES CITIZENSHIP.

#### **FLAGGING OF CRIMINAL RECORDS TO IDENTIFY CONVICTED FELONS**

THE ANTI-DRUG ABUSE ACT OF 1988 MANDATED THE ATTORNEY GENERAL TO DEVELOP A SYSTEM FOR THE IMMEDIATE IDENTIFICATION OF FELONS WHO ATTEMPT TO PURCHASE FIREARMS. TO COMPLY WITH THIS

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MANDATE, THE FBI AND ITS USER COMMUNITY DEVELOPED A SYSTEM FOR FLAGGING CRIMINAL HISTORY RECORDS. IN DECEMBER 1992, A PILOT PROGRAM WAS IMPLEMENTED INCORPORATING THREE UNIQUE FLAGS TO INDICATE THE STATUS OF CRIMINAL RECORDS WHICH COULD DISQUALIFY AN INDIVIDUAL FROM PURCHASING A FIREARM.

- ONE FLAG, "X", INDICATES THAT THE RECORD HAS A PENDING COURT DISPOSITION OR THE CONVICTION STATUS IS UNKNOWN.
- THE SECOND FLAG, "F", INDICATES THE RECORD CONTAINS ONE OR MORE FELONY CONVICTIONS.
- THE THIRD FLAG, "M", INDICATES A MISDEMEANOR CONVICTION ONLY OR NO CONVICTIONS WHATSOEVER.

WITH THIS FLAGGING SYSTEM, THE ONLY RECORDS WHICH HAD TO BE SCRUTINIZED FOR DETAIL WERE THOSE INDICATING A PENDING OR UNKNOWN DISPOSITION. RECORDS WITH FELONY FLAGS WERE USED TO AUTOMATICALLY DENY SOMEONE THE PURCHASE OF A FIREARM; WHILE MISDEMEANOR OR NO CONVICTION RECORDS COULD BE IGNORED SINCE THEY WERE NON-DISQUALIFYING RECORDS. PRESENTLY, FIFTEEN STATE AGENCIES ARE FLAGGING THEIR RECORDS IN THE NATIONAL FILE, AND THE BUREAU OF PRISONS IS FLAGGING THE RECORDS OF PERSONS CONVICTED OF A FEDERAL FELONY. IN OUR CRIMINAL HISTORY FILE, APPROXIMATELY 2.3 MILLION RECORDS ARE APPROPRIATELY FLAGGED WITH EITHER AN "F" OR "M".

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

WITH THE ENACTMENT OF THE OMNIBUS CONSOLIDATED APPROPRIATIONS ACT, A PORTION OF OUR RECORD FLAGGING SYSTEM LOST ITS

VALUE. SINCE CERTAIN MISDEMEANOR CONVICTIONS NOW PROHIBIT PERSONS FROM POSSESSING A FIREARM, THE USERS CAN NO LONGER IGNORE THE RECORDS FLAGGED AS HAVING EITHER NO CONVICTION OR ONLY A MISDEMEANOR CONVICTION. THESE RECORDS TAKE ON THE SAME CONNOTATION AS THOSE WITH A PENDING OR UNKNOWN CONVICTION. WE HAVE MEETINGS SCHEDULED DURING MARCH AND APRIL WITH OUR USER COMMUNITY TO DISCUSS HOW THE RECORD FLAGGING SYSTEM CAN BE REVISED SO THAT DISQUALIFYING RECORDS CAN BE MORE READILY IDENTIFIED.

#### **STATUS AND TIME LINE FOR INSTANT CHECK SYSTEM**

USING THE CONCEPT OF OPERATIONS PREPARED WITH ITS USER COMMUNITY, THE FBI IS NEGOTIATING A TIMETABLE WITH A DEVELOPMENT CONTRACTOR WHO WILL PROCURE THE HARDWARE AND DEVELOP THE SOFTWARE FOR THE INSTANT CHECK SYSTEM. THE FOLLOWING IS THE PROPOSED TIME LINE:

|               |                                                                                                                 |
|---------------|-----------------------------------------------------------------------------------------------------------------|
| JUNE 1997     | - FEDERAL AGENCIES BEGIN PROVIDING SAMPLE TEST DATA.                                                            |
| JULY 1997     | - STATE INTERFACE REQUIREMENTS ARE COMPLETED.                                                                   |
| AUGUST 1997   | - THE FBI WILL HOST A NATIONAL CONFERENCE OF STATE USERS TO BEGIN DEVELOPING INTERFACE PLANS FOR STATE SYSTEMS. |
| FEBRUARY 1998 | - BEGIN TESTING STATE INTERFACE WITH PILOT STATE (S).                                                           |
| MAY 1998      | - FEDERAL AGENCIES WILL BEGIN TESTING DATA TRANSFER PROCEDURES.                                                 |

- AUGUST 1998 - BEGIN LOADING FEDERAL AGENCY DATA FOR THE OPERATIONAL SYSTEM.
- OCTOBER 1998 - CONDUCT FINAL TEST ON INSTANT CHECK SYSTEM.
- NOVEMBER 1998 - THE INSTANT CHECK SYSTEM IS OPERATIONAL.

FROM YOUR LETTER, I KNOW THAT ONE OF THE ISSUES IMPORTANT TO YOUR SUBCOMMITTEE TODAY IS WHAT IMPACT THE NEED FOR DOMESTIC VIOLENCE CONVICTIONS WILL HAVE ON THE IMPLEMENTATION OF THE INSTANT CHECK SYSTEM. THE FBI HAS MANY MISDEMEANOR ARRESTS AND CONVICTIONS IN ITS FILES; BUT IN MOST CASES, ONE CANNOT ASCERTAIN BY LOOKING AT THE RECORD WHICH ARRESTS ARE FOR DOMESTIC VIOLENCE CRIMES. FURTHER, THERE IS NO AUTOMATED WAY THE FBI CAN GO BACK INTO THE RECORDS AND IDENTIFY SUCH ARRESTS OR CONVICTIONS. THIS IS THE REASON WE ARE ASKING OUR USER COMMUNITY THIS MONTH AND NEXT TO LOOK INTO A NEW FLAGGING SYSTEM TO PROVIDE A REMEDY FOR THIS SITUATION. THIS WILL NOT IMPACT OUR IMPLEMENTING THE INSTANT CHECK SYSTEM AS SCHEDULED. WE INTEND TO PROCEED WITH THE EXISTING DATA THAT IS AVAILABLE FROM LOCAL, STATE, AND FEDERAL DATA BASES AS PREVIOUSLY DESCRIBED. WE HAVE DESIGNED THE SYSTEM TO OPERATE WITH LOCAL AND STATE CRIMINAL JUSTICE AGENCIES CONDUCTING THE CHECKS FOR THE FEDERAL FIREARMS LICENSEES WITHIN THEIR STATE. THEY MAY, IN SOME CASES, HAVE MORE DETAILED INFORMATION THAN IS AVAILABLE AT THE NATIONAL LEVEL, E.G., STATE MENTAL COMMITMENT RECORDS AND DOMESTIC VIOLENCE CONVICTIONS.

THERE IS ONE CONCERN WE HAVE, HOWEVER, THAT I WOULD LIKE TO MENTION AT THIS TIME. APPROXIMATELY ONE-HALF OF THE STATES HAVE STATE STATUTES EITHER REQUIRING THE ISSUANCE OF A PERMIT FOR THE

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PURCHASE OF A FIREARM OR SOME OTHER BACKGROUND CHECK IN RELATION TO THE SALE OF A FIREARM. THE REMAINING STATES ARE CONDUCTING BACKGROUND CHECKS TODAY UNDER THE INTERIM PROVISION OF THE BRADY ACT WHICH REQUIRES CHIEF LAW ENFORCEMENT OFFICERS TO CONDUCT THESE CHECKS. WHEN THE INSTANT CHECK SYSTEM BECOMES AVAILABLE IN 1998, THE BRADY ACT NO LONGER REQUIRES THE CHIEF LAW ENFORCEMENT OFFICER TO MAKE THE CHECKS. THE ACT STATES THAT THE SYSTEM SHALL BE AVAILABLE FOR THE FEDERAL FIREARMS LICENSEES TO CONTACT BY TELEPHONE OR BY OTHER ELECTRONIC MEANS IN ADDITION TO THE TELEPHONE. OUR CONCEPT OF OPERATIONS FOR THE INSTANT CHECK SYSTEM CALLS FOR LOCAL OR STATE CRIMINAL JUSTICE OFFICIALS TO CONDUCT THE CHECKS VOLUNTARILY FOR FEDERAL FIREARMS LICENSEES IF NOT REQUIRED TO DO SO BY STATE LAW. IN PART, THIS APPROACH IS USED BECAUSE DISABLING RECORDS AT THE STATE AND LOCAL LEVEL MIGHT NOT BE AVAILABLE AT THE NATIONAL LEVEL. WE ARE HOPEFUL THAT IT WILL NOT BE NECESSARY FOR THE FBI TO HANDLE THE CHECKS FOR FEDERAL FIREARMS LICENSEES IN MORE THAN ONE OR TWO STATES. OUR CONCERN IS THAT A LARGER NUMBER OF STATES WILL NOT HANDLE THESE CHECKS THEREBY PLACING A GREATER BURDEN ON THE FBI IN TERMS OF MANAGING A PROGRAM FOR LOCAL GUN SALES FROM THE NATIONAL LEVEL. UNTIL WE HAVE OUR STATE TECHNICAL CONFERENCE IN AUGUST, THE EXACT NUMBER OF STATES WHICH MAY FALL INTO THIS CATEGORY WILL REMAIN IN QUESTION.

THAT CONCLUDES MY OPENING REMARKS MR. CHAIRMAN. AGAIN, THANK YOU FOR ALLOWING ME AND MY ASSOCIATES TO BE PRESENT TODAY. WE WOULD WELCOME ANY QUESTIONS YOU MAY HAVE OF US AT THIS TIME.



DATE: 2/26/97  
PAGE: 3A

# Gun law could disarm cops, chiefs say

Misdemeanor domestic abuse  
also could lead to a loss of job

By Gary Fields  
USA TODAY

More than 60,000 police officers who have been convicted of domestic abuse could have their firearms taken away — or lose their jobs — because of a new federal gun control law, estimates the National Association of Police Chiefs.

In a survey of 1,878 police chiefs, 11.4% said at least one officer in their departments would be affected. At that rate, more than 60,000 of the 600,000 police officers in the country would be affected.

Police groups are lobbying for changes in the domestic abuse amendment to the Gun Control Act of 1968, which

made it illegal for anyone convicted of misdemeanor domestic abuse to possess a gun. That includes convictions before the law went into effect Sept. 30.

The House subcommittee on crime begins hearings next week on changing the law.

The issue has prompted three federal lawsuits and has two of the nation's largest law enforcement groups at odds.

The Fraternal Order of Police wants to stop the ban from being applied retroactively. The National Association of

Police Organizations wants police to be exempt.

But advocates for victims of domestic abuse oppose changing the law or making special exceptions for police.

"If we have identified (a police officer) as a violent individual, they shouldn't be in that job," says Rita Smith, of the National Coalition Against Domestic Violence. "They certainly would be a very bad representative to intervene in a domestic violence call."

Gerald Arenberg, of the chiefs of police group, says Congress should hold police accountable: "Making cops exempt is not going to work."

It is too early to say how many officers will have their weapons taken away. But a USA TODAY survey of 25 law enforcement agencies, including those in the nation's 15 largest cities, found that of the more than 100,000 officers there, 152 could lose their firearms or jobs. Most are in New York City, which has the nation's largest police force.

## 2 Democrats Say Mexico Is No U.S. Ally In Drug War

By CHRISTOPHER S. WREN

WASHINGTON, Feb. 25 — Democratic leaders on Capitol Hill objected today to the prospect that the Clinton Administration might certify Mexico as an ally in the war on illegal drugs, even as some senior Administration officials acknowledged that drug corruption had become so endemic throughout the ranks of Mexican law enforcement as to render cooperation difficult if not impossible.

Representative Richard A. Gephardt, the House minority leader, and Senator Dianne Feinstein, Democrat of California, wrote separate letters saying Mexico deserved to be decertified, but with penalties waived in the vital national interest.

The President is required to notify Congress every year as to which countries are cooperating with the United States to fight drugs. Those who have failed to do so are consigned to a pariah status that renders them no longer eligible for investment credits from the United States and makes them subject to other trade penalties. The President's decision is due by March 1.

In a letter addressed to Gen. Barry R. McCaffrey, the Administration's director of national drug control policy, Mr. Gephardt said that "our 2,000-mile common border with Mexico demands that we get more support from the Mexican Government and that greater support for rooting out corruption be implemented."

And Ms. Feinstein wrote President Clinton, "I believe the evidence is overwhelming and can lead to no decision other than the decertification of Mexico."

Their concerns were motivated in part by the arrest last week of Mexico's senior counterdrug official, Gen. Jesús Gutiérrez Rebollo, on charges of collaborating with the head of a major drug syndicate.

In announcing the latest national drug strategy today, President Clinton and General McCaffrey both

avoided saying whether Mexico would be certified. Mr. Clinton said the Administration was committed to cooperating with its Latin American friends.

"We want to cooperate with them, but we want them to cooperate with us, as well," Mr. Clinton said. "We want to reduce our demand for drugs, but we are determined to reduce the supply as well."

General McCaffrey said that the Administration was still discussing the question of certification. "This is not a cooked deal," he said. "There is going to be an intense analysis of the law."

But he stressed that the Administration wanted to keep working with the Mexican Government. "It is our belief that the United States and Mexico are trapped, economically, culturally, politically and because of drug crime, in the same continent, and we'd better figure out a way to work on it together," he said.

A bleaker picture was presented at a hearing on counternarcotics efforts in Mexico. Testifying before the House Subcommittee on National Security, International Affairs and Criminal Justice, Thomas A. Constantine, the head of the Drug Enforcement Administration, said General Gutiérrez's arrest illustrated how deeply rooted corruption has become in Mexico. As a result, Mr. Constantine said, "There is not one single law enforcement institution with whom D.E.A. has a really trusting relationship."

Because General Gutiérrez inherited the files of his predecessors as head of Mexico's National Institute to Combat Drugs, Mr. Constantine said, it had to be assumed that anything shared with the Mexicans had been passed by General Gutiérrez to the drug traffickers.

Asked in an interview later about the state of cooperation, Mr. Constantine said that "virtually everything is frozen right there, in terms of sharing information."

In his testimony, Robert S. Gelbard, the Assistant Secretary of State responsible for matters related to drugs, described Mexico as "one of our most important allies in the struggle against international crime and drug trafficking." But he too spoke of "persistent and widespread official corruption."

When Representative Thomas M. Barrett, Democrat of Wisconsin, asked how much damaging material had been given to General Gutiérrez, Mr. Gelbard replied, "I do not know." He said that investigators were still trying to find out.

Several members of Congress argued that Colombia, which looks likely to be decertified for a second year, had done more to fight drug trafficking than Mexico.

The subcommittee chairman, Dennis Hastert, Republican of Illinois, said that if Colombia was decertified and Mexico was not, "I, for one, will have a hard time not seeing this as a double standard — a double standard that undermines the role of certification in our international drug strategy." If that happened, Mr. Hastert warned, "a close examination of this decision by Congress will follow."

"We don't care about technical abstractions. You are taking away our money."

Some conservative analysts, on the other hand, say the prospect of \$1 trillion in savings may be impossible for Congress to resist, particularly if the gradual reduction in cost-of-living payments can be accomplished without a congressional vote.

"This is the least painful way to solve some of the problems with entitlement programs," said Stephen Moore, director of Fiscal Policy Studies at The Cato Institute. "If we can't get Congress to do this, we may as well all go home. Because almost all the alternatives are worse than this one is."

Moynihan said that by cutting 1.5 percentage points from Social Security cost-of-living adjustments, or COLAs annually, the federal government could keep the program solvent for the next 75 years.

But Social Security Administrator Shirley S. Chater said Wednesday that any changes in calculating Social Security adjustments must be "based on the best technical expertise available, not on the pressures of the federal budget."

The Bureau of Labor Statistics, which calculates the price index, has always cautioned that it is not a true cost-of-living index. Commissioner Katharine G. Abraham, however, said her office disagrees with some technical points raised by the Boskin commission.

A leading Bureau of Labor Statistics economist, who asked not to be identified, said his colleagues agree with many principles stated by the commission.

The areas of agreement mostly concern "substitution bias" in the Consumer Price Index. That is, if consumers are facing higher beef prices, for instance, they could buy chicken instead or shop at a discount grocer. The current method of price index measurement largely assumes that consumers pay a higher price for the beef.

The economist said the chief area of disagreement between Bureau of Labor Statistics and the Boskin commission concerns "quality change bias." That means the bureau has failed to fully and accurately account for the effects of quality enhancements, such as safer, more reliable cars or medical techniques that have added years to Americans' life expectancies.

That accounted for just over half the commission's recommended reduction in the current index.

The commission also said the bureau sometimes takes years to add new products to the list of items whose prices it monitors. That delay, the commission said, means the bureau often misses steep decreases in the prices of popular items like VCRs and cellular telephones.

But "we just don't have enough empirical evidence to support that conclusion," said the bureau expert.

The commission recommended that Congress close part of the accuracy gap by giving the Bureau of Labor Statistics more resources to gather, sort and analyze information. Beyond that, however, the commissioners called for new laws to change indexing provisions.

David Certner, senior coordinator for economic issues at the American Association of Retired Persons, said the commission's members were chosen after most had already said the index was biased. "It's not a great surprise that they would come out and say there's a major overstatement," he said. "We ought to leave these determinations to the BLS."

A Bureau of Labor Statistics experimental index, he noted, found that the elderly may face significantly higher costs of living than average citizens, because they spend more of their income on medical care.

Concord Coalition Executive Director Martha Phillips, however, said groups like the AARP "are going to have an automatic reflex to oppose this (CPI change). When you hear them, consider who employs them."

## Gun order may affect officers guilty of domestic abuse By Robert Ingrassia and Jason Sickles The Dallas Morning News (KRT)

DALLAS Police officers convicted of misdemeanor domestic abuse must turn in their guns under a recent federal order that has confused law enforcement officials nationwide.

A Bureau of Alcohol, Tobacco and Firearms order sent out last week cites a recent congressional revision to gun laws that makes it illegal for anyone found guilty of assaulting a family member, spouse or domestic partner from buying or possessing

a firearm.

The law, part of the federal funding bill that President Clinton signed Sept. 30, added domestic abuse to the list of crimes that prohibit gun ownership. But unlike the 1993 Brady law prohibitions, the new statute does not exempt law enforcement officials.

Officers convicted of family violence "must immediately dispose of all firearms and ammunition in their possession," according to a letter from ATF Director John W. Magaw to all U.S. law enforcement agencies. "The continued possession of firearms and ammunition by persons under this disability is a violation of law."

The letter has raised questions among state and local law enforcement officials. Many said Wednesday that they don't know how many officers might be affected, who will enforce the order or whether the law is constitutional.

"Are federal agents going to come and take our officers' guns and ammunition, or is this a DPS responsibility?" said Laureen Chernow, a spokeswoman for the Texas Department of Public Safety in Austin. "There are a lot of unanswered questions before we can decide how we're going to initiate our action."

The BATF order states that the new law pertains to officers convicted of misdemeanor domestic abuse at any time, even if the crime happened before the person became a police officer.

In an odd twist, the law applies only to misdemeanor abuse, not more serious felony convictions. Civilians convicted of any felony already are barred by the Brady law from possessing firearms, but police officers are exempt from that law.

BATF officials could not be reached for comment Wednesday. But an official with the U.S. Treasury Department, which includes the BATF, said the new law explicitly does not exempt law enforcement officers.

"It will be up to the federal, state and local law enforcement officials to work out the details," said the Treasury official, who asked not to be identified.

In Dallas, police officials said they don't know how many, if any, of the department's 2,800 sworn officers have convictions for domestic abuse. Sgt. Ches Williams with the department's family violence squad said a preliminary review indicated that no officers have been convicted of domestic violence in Dallas.

"The city attorney's office is reviewing it, and we will have discussions with them on the appropriate course of action," said Ed Spencer, a Dallas police spokesman.

Statewide, about 58,000 officers hold active police licenses. The Texas Commission on Law Enforcement Officer Standards-Education does not track convictions by type of crime and has no way of knowing how many officers have domestic abuse convictions, said Wayne Green, the agency's regulatory director.

Green said the agency tracks Class A and B misdemeanors, but not Class C crimes. The new law, he said, may "change everything" regarding how the commission deals with officers convicted of crimes.

"Assuming it's constitutional, then our first thing would be to go back to review our regulations on licensing an officer and then raise the minimum standards," he said.

Senior Cpl. Glenn White, president of the Dallas Police Association, said that enforcing the measure is "going to create chaos."

"We're not above the law; we need to be dealt with like everybody else," he said. "But this looks like another thing that may be cumbersome for us to get through. Most people have a right to carry a gun, but they don't have to have a gun to perform their jobs."

The Dallas Police Department code of conduct requires officers to be armed at all times unless otherwise directed by the chief of police.

The newest revisions were sponsored by Sen. Frank Lautenberg, D-N.J. A spokesman in his office said Wednesday that the senator supported the measure because courts often reduce domestic felony crimes to misdemeanors, thereby excluding offenders from Brady bill gun prohibitions.

"What this does is fill in the loopholes," spokesman Ken Jaques said. "The whole purpose of our legislation is to save lives. It is a very simple law: If you're convicted of domestic violence, you cannot own a gun."

A provision including government entities in the revised law was added by Rep. Bob Barr, R-Ga., Jaques said. Barr's office did not respond to telephone calls Wednesday.

A Dallas advocate for domestic abuse victims said she supports the measure.

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hospital, said English-only laws promote disunity, ostracizing foreign-born groups and essentially denying them government services.

"This country has always had many diverse people with many languages," Yniguez said after the hearing.

Her attorney, Robert Pohlman, also disputed the group's legal standing, citing the closeness of the 1988 referendum: "If they do represent the people of Arizona, they represent 50.5 percent."

The Supreme Court justices also questioned Yniguez's standing to protest the law, noting that she no longer works for the state.

## **Economists, leaders back privatization, individual investment choices for Social Security** **By Kelly Ryan The Dallas Morning News (KRT)**

DALLAS Economists and conservative leaders who support privatizing Social Security said Wednesday that individuals should be able to make their own investment choices for retirement.

But those who oppose privatization said the current Social Security program has done its job well, and it would be a mistake to tear down the entire government-managed system.

The two-hour debate was taped for a "Firing Line" television program, which will be broadcast Dec. 20. It was part of the National Center for Policy Analysis lecture series.

William F. Buckley, a conservative syndicated columnist and author, led a team of four people who support privatizing Social Security, which he called "simply another redistributive system."

"Grown-up human beings should be getting the opportunity they get in Chile," he said, referring to that country's tax-deferred savings program.

For the past 15 years, 10 percent of Chilean workers' salaries are put into accounts administered by private investment funds.

The four opponents of privatization, however, said it is not a good substitute for a program that was designed as a "safety net" for people who are retired, not able to work or survivors of those who die prematurely.

"The price of privatization is too high," said Henry Aaron, team leader. Aaron, a senior fellow in the economics study program at the Brookings Institution, said small payroll tax increases would keep the current system in balance.

"Social Security is the nation's pension program, and I see no reason it should be taxed any more or less" than other pension plans, he said, asking Buckley, "What's wrong with that?"

Buckley quickly countered, "What's wrong with that is it's (Social Security payments) already been taxed."

The spirited debate quickly turned into an ideological battle about whether the private sector or the government is best suited to manage a national retirement program. The two sides also disagree about the original intent behind Social Security.

"Social Security is something that does not guarantee high incomes to people. It guarantees a minimum income," said Robert Eisner, an opponent and a professor of economics at Northwestern University.

"All of the privatization schemes I've seen begin by knocking out a major part of that guarantee to senior citizens," he said.

Theodore Marmor, another opposing member and professor of public policy and political science at Yale University, said a private system would not offer individuals protection against poor investment choices or fluctuations in the economy.

"This is the one program that we've got that securely protects against a fall in income," he said of the current system.

Dr. John Goodman, president of the National Center for Policy Analysis and a member of the affirmative side, said he doubted if there would be Social Security money left for today's college students, who will retire around the year 2040.

"Polls tell us that young people today are more likely to see a UFO than they are to see benefits under this system," he said.

Brian Burch, a 21-year-old senior political science major at the University of Dallas, said that's why he supports privatization.

"I favor individual choice over government choice," he said after the debate, which was taped at the university. "I think there definitely will be some money there for me, but not what I paid into it."

Some of the debaters suggested compromises, rather than abolishing the current system. Peter Peterson, a former U.S.

Secretary of Commerce and president of The Concord Coalition, said increasing private savings, raising the retirement age and gradually reducing benefits would help stabilize the system.

"Modest changes will solve the problem," said Peterson, a member of the affirmative team.

## **Price index revamping would lower pensions** **By George Rodrigue**

### **The Dallas Morning News (KRT)**

WASHINGTON Millions of Americans would face higher taxes and lower Social Security pensions under recommendations made Wednesday by a blue-ribbon commission studying how the rate of inflation is calculated.

If the commission's recommendations are not followed, however, the federal government could find itself \$1 trillion deeper in debt by 2008 and under immense pressure to cut spending or raise taxes.

With stakes that large, experienced budget watchers said the 94-page report of the Senate Finance Committee Commission on the Consumer Price Index may touch off next year's hottest political debate. "This can be demagogued even more thoroughly than Medicare," said Robert Reischauer, a former Congressional Budget Office director. "It could make that (political infighting) look like child's play."

The commission, chaired by former Bush administration economist Michael J. Boskin, said the Consumer Price Index overstates annual increases in the true cost of living by about 1.1 percentage points.

Citing the bias, the commission recommended that the federal government create a new cost-of-living index to replace the Consumer Price Index when calculating Social Security cost-of-living adjustments or setting higher thresholds for income-tax brackets.

Failure to account for a lower rate of inflation, the commission said, would mean that by 2006, the price index alone would cost \$148 billion, making it the fourth-largest government program, "after Social Security, health care and defense."

Supporters of the commission's report said it was designed to ensure that retirees and taxpayers stay even with inflation no more and no less. "We're not trying to cut. We're not trying to raise. We're proposing an accurate count," said Sen. Daniel Patrick Moynihan, D-N.Y., the ranking Democrat on the Senate Finance Committee.

On Wednesday, however, leaders of both parties greeted the recommendations warily.

Senate Finance Committee William V. Roth Jr., R-Del., said he would hold hearings on the report in January, but expected the White House to make the first substantive move.

"President Clinton's got the State of the Union Address. He could say something then," said Roth.

House Ways and Means Committee Chairman Bill Archer of Houston, R-Texas, noted that Clinton has previously supported a downward adjustment in the price index. "I look forward to hearing the president's latest position," he said. "Clearly, a change of this importance will only be implemented if it is bipartisan and if it's supported by President Clinton."

Presidential spokesman Mike McCurry was noncommittal.

"The White House will view it very carefully because it has enormous impact on the lives of millions of Americans, and has enormous consequences for spending," he said.

In any given year, retirees would feel relatively little impact if the government cut its inflation estimate by 1.1 percentage points.

The Social Security Administration says next year's average benefits would have been about \$737 under the Boskin commission's recommendations, compared with \$745 under current law. That's a monthly difference of \$8. Over time, however, the difference would compound.

"Money" magazine estimated that under the Boskin commission's recommendations, a retired couple currently getting \$30,000 in Social Security benefits would receive \$43,584 in 2010, vs. \$49,896 under current law. Their total over 14 years: \$41,296.

Reischauer predicted the Boskin commission's recommendations would not go far.

"If you're a congressman, you can have Mike Boskin come out to your district and explain that his regression equations prove that this is a fairer system," he said. "But voters are going to say,

"We don't want to think that a law enforcement officer would commit a crime, but they do, and they should be accountable," said Jan Langbein, executive director of the Genesis shelter for battered women.

"Domestic violence is an equal-opportunity epidemic, so this occurs among lawyers, doctors, ministers and police officers."

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## **U.S. condemns Serbia's shutdown of independent broadcasts** By Richard Whittle **The Dallas Morning News (KRT)**

WASHINGTON The State Department spokesman rebuked Serbia's government on Wednesday for behaving "like Communist thugs" and said the Voice of America would transmit a silenced Belgrade radio station's programs.

"The United States believes that the voices of the Serbian people ought to be heard on Serbian radio and TV, ought to be heard on the streets of Belgrade," spokesman Nicholas Burns said. "The United States is taking the side of democracy in Serbia."

Serbian President Slobodan Milosevic, responding to two weeks of mass protests against his government's annulment of municipal elections that went against his party, shut down three independent radio stations on Tuesday.

Two stations the popular Radio B92 and Radio Index were ordered off the air. A third was jammed.

A Serbian government statement said B92 a consistent critic of Milosevic was "illegal" because it lacked a licensed frequency. The government has rejected repeated applications for a frequency by B92.

The stations were censored as 90 judges signed a letter demanding that the Serbian Supreme Court review a ruling in which it upheld the annulment of the Nov. 17 elections in Belgrade and 14 other cities. Five Supreme Court judges were among those who signed the letter.

"Our goal is to protect the honor and dignity of the court," the judges said in the letter, which was published by the weekly "Telegraf" newspaper.

The protests continued Wednesday, with an estimated 150,000 persons taking to the streets and 25,000 students marching in support of Radio B92. Other demonstrators denounced the government-run television and a major daily newspaper that supports Milosevic.

Burns said that in response to the regime's censorship, the U.S. government's Voice of America would carry "over the next couple of days as part of its normal broadcast" programs originated by Radio B92. The programs will be broadcast via a telephone hook-up, he said.

VOA, whose mandate is to report news about America to foreign lands, also will expand its Serbian-language broadcasts, he said.

The 15-nation European Union also criticized Serbia's censorship, issuing a statement that said: "The EU considers it essential that independent democratic voices are allowed to be heard."

The United States also "reserves the right," Burns said, to tighten economic sanctions imposed on Serbia as punishment for its role in starting the wars that wracked former Yugoslavia from 1992 to 1995.

"We haven't arrived at that point," Burns said. He added: "We would hope that the Serbian government would cease and desist from its efforts to try to act like Communist thugs from the Cold War period."

Milosevic, a former Communist, has headed a semi-dictatorial regime in Serbia and Montenegro the remains of Yugoslavia since the communist-era Yugoslavia disintegrated and Slovenia, Croatia and Bosnia-Herzegovina declared independence.

He is widely blamed for instigating the war in Bosnia by aiding and abetting rebel Bosnian Serbs led by Radovan Karadzic. But Milosevic also made possible the Bosnian peace accords reached in Dayton, Ohio, a year ago by signing on behalf of Bosnia's Serbs.

Angered by the Bosnian Serbs' failure to implement key parts of the Dayton accords, U.S. officials have threatened several times to tighten the sanctions on Serbia.

In Geneva last June, Secretary of State Warren Christopher delivered the same threat to Milosevic personally in an attempt to get him to have Karadzic delivered to a U.N. war crimes tribunal.

Neither the United States nor its allies has ever made any

move to carry out such threats, but Burns said Milosevic "should not bank on any kind of a dream that somehow the United States and other countries are going to be quiet at a time when he's suppressing the rights of the Serbian people."

Burns also said that Deputy Secretary of State Strobe Talbott, at a meeting in London on implementation of the Bosnia accords, told Serbia's foreign minister "that there must be no violent suppression of these demonstrations."

Serbian police have arrested about 30 people for destroying property since the demonstrations began, but otherwise the protests have led to no violence on either side so far.

Milosevic has been secluded since the demonstrations began, but his state-run media have reported critically on the protesters.

The demonstrations nevertheless represent the most severe threat ever to Milosevic's eight-year regime. Should he fall, there clearly would be repercussions in Bosnia, where more than 15,000 U.S. troops are part of a NATO security force.

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**Funeral Ceremony Held for TWA Flight 800 Victims (Pinelawn, N.Y.) By Martin C. Evans=**  
**(c) 1996, Newsday**

PINELAWN, N.Y. They came to sit before coffins dedicated to their loved ones, hoping to finally put their loss behind them.

About 60 relatives of victims of the July 17 crash of TWA Flight 800 assembled at Pinelawn Memorial Park Wednesday for a funeral ceremony for 14 victims whose bodies were never found.

"You've given so many around the world courage and strength by your perseverance and love," Father Mychal Judge, a chaplain with the New York City Fire Department, told the victims' relatives during a benediction. "Lord, as our loved ones look upon your face, smile on them gently."

Suffolk County Executive Robert Gaffney urged family members to take comfort in their recollections of their lost loved ones.

"Hope is not the comfort that something will turn out well, but the conviction that something will make sense regardless of how it turns out," Gaffney said. "Let those good memories sustain us, and God bless each and every one of you."

The bodies of 15 of the 230 victims on TWA Flight 800 have not been recovered since the Boeing 747 went down about 10 miles south of Long Island's Moriches Inlet. Only 12 caskets were present Wednesday because the family of one victim declined to attend the funeral and the family of two victims attended but asked that no coffins be present to represent their loved ones.

Relatives flew in from as far away as Israel to attend the hour-long ceremony, which was organized and paid for by TWA. They were encouraged to place mementos in the coffins, which were dedicated to their lost loved ones. The coffins were to be buried Wednesday night at the cemetery.

But members of at least one family that attended said while they found comfort through solidarity with the relatives of other victims, they believe TWA had treated them shabbily.

"It wasn't so much that it was disruptive, but TWA planned it without any consideration to the families," said Cindy Hurd, whose brother, James "Jamie" Hurd III, 29, had been flying to France for a vacation.

She complained that holding the ceremony in the middle of the week forced family members, who had already taken large amounts of time off to grieve earlier in the year, to choose between missing more work or missing the ceremony.

She said Jamie's girlfriend, Hope Schab, was unable to take more time off to attend.

Hurd family members seven attended said they felt more comforted by an Oct. 20 memorial service in their hometown of Severn, Md., which drew 600 people. They said they would have preferred TWA to have covered the entire cost of that ceremony rather than hold funeral services Wednesday, but that TWA paid only half.

"This really wasn't symbolic of Jamie," said Stephanie Hurd, another sister. "We really came to be with the other families."

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