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001. fax	re: attachment 1 [partial] (2 pages)	12/11/1996	b(7)(C), b(6)

COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Jose Cerda
OA/Box Number: 16954

FOLDER TITLE:

Lautenberg Gun Bill 1997 [2]

2016-0931-S

rc2292

RESTRICTION CODES

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

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

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

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

RR. Document will be reviewed upon request.

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

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



FRATERNAL ORDER OF POLICE

NATIONAL LEGISLATIVE PROGRAM

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



GILBERT G. GALLEGOS
NATIONAL PRESIDENT

JAMES O. PASCO, JR.
EXECUTIVE DIRECTOR

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NATIONAL VICE PRESIDENT
CHAIRMAN, NATIONAL LEGISLATIVE COMMITTEE

FAX COVER SHEET

DATE: 2/5

FROM: **James O. Pasco, Jr.**
Executive Director

TO: Christy Robinson

NUMBER: _____

Comments: _____

Transmitting 7 pages, including cover sheet. Please contact Fraternal Order of Police
Legislative Office if you did not receive all sheets.

O:\KOR\KOR97.168

final

Introduced. 2/4/97

105TH CONGRESS
1ST SESSIONS. 262

IN THE SENATE OF THE UNITED STATES

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

A BILL

To amend title 18, United States Code, to provide for the prospective application of certain prohibitions relating to firearms.

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

3 **SECTION 1. PROSPECTIVE APPLICATION OF THE DOMES-**
4 **TIC VIOLENCE MISDEMEANOR CONVICTION**
5 **FIREARMS PROHIBITION.**

6 (a) **FINDINGS.**—Congress makes the following find-
7 ings:

8 (1) Spouses, ex-spouses, and current and
9 former boyfriends commit over 1,000,000 violent

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S.L.C.

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1 crimes against women each year, including assault,
2 rape, and murder.

3 (2) Approximately 28 percent of all women
4 murdered in the United States each year are killed
5 by current or former husbands or boyfriends.

6 (3) Weapons are used in 30 percent of domestic
7 violence incidents.

8 (4) Domestic violence calls are one of the larg-
9 est categories of calls to police each year, and, in
10 some locations, up to one-third of all police time is
11 spent responding to domestic calls.

12 (5) Studies show that police are more likely to
13 respond to a reported incident within 5 minutes if
14 the offender is a stranger to the victim and that, po-
15 lice are more likely to take a formal report with re-
16 spect to an incident in which the offender is a
17 stranger to the victim.

18 (6) Studies show that only approximately 10
19 percent of spouses who are abused ever call the po-
20 lice, in spite of the fact that conjugal assaults ac-
21 count for 12 percent of all assaults that result in se-
22 rious injury, 16 percent of all assaults requiring
23 medical care, and 18 percent of assaults that result
24 in the loss of at least a full day of work.

1 (7) Data compilation suggests that injuries in
2 all domestic assaults are at least as severe as those
3 suffered in 90 percent of violent felonies, although
4 the overwhelming number of domestic violence inju-
5 ries are considered to be only misdemeanors in most
6 States.

7 (8) In the 104th Congress, Congress amended
8 the Federal law that regulates the lawful transfer
9 and possession of firearms and ammunition to pro-
10 vide that an individual's conviction of a mis-
11 demcanor crime of domestic violence will prohibit the
12 individual from possessing any firearm or ammuni-
13 tion and will prohibit others from licensing or trans-
14 ferring a firearm or ammunition to that person.

15 (9) The term "misdemeanor crime of domestic
16 violence" is defined in Federal law as a Federal or
17 State misdemeanor crime that "has, as an element,
18 the use or attempted use of physical force, or the
19 threatened use of a deadly weapon, committed by a
20 current or former spouse, parent, or guardian of the
21 victim, by a person with whom the victim shares a
22 child in common, by a person who is cohabiting with
23 or has cohabited with the victim as a spouse, parent,
24 or guardian, or by a person similarly situated to a
25 spouse, parent, or guardian of the victim".

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S.L.C.

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1 (10) For purposes of Federal law, to be consid-
2 ered convicted to be of a misdemeanor crime of do-
3 mestic violence, a person must—

4 (A) have been represented by counsel or
5 knowingly waived representation; and

6 (B) have been tried by a jury or knowingly
7 waived trial by a guilty plea or otherwise if enti-
8 tled to a jury trial for the offense at issue.

9 (11) There are exceptions to the new Federal
10 law that may apply to an individual determined to
11 have been convicted of a misdemeanor crime of do-
12 mestic violence, if “the conviction has been expunged
13 or set aside, or is an offense for which the person
14 has been pardoned or has had civil rights restored
15 (if the law of the applicable provision provides for
16 the loss of civil rights under such an offense) unless
17 the pardon, expungement, or restoration of civil
18 rights expressly provides that the person may not
19 ship, transport, possess, or receive firearms”.

20 (12) Congress clearly intended for this Federal
21 law to apply to peace officers. The general exception
22 to the law for firearms and ammunition that are is-
23 sued for the use of “the United States or any de-
24 partment or agency thereof or any State or any de-
25 partment, agency, or political subdivision thereof,”

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S.L.C.

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1 does not apply to individuals convicted of a mis-
2 demeanor crime of domestic violence.

3 (b) UNLAWFUL ACTS.—Subsections (d)(9), (g)(9),
4 and (s)(3)(B)(i) of section 922 of title 18, United States
5 Code, are each amended by inserting”, on or after Septem-
6 ber ³⁰~~28~~, 1996,” before “of a misdemeanor”.

7 (c) EFFECTIVE DATE.—The amendments made by
8 this section shall take effect as if included in the amend-
9 ments made by the first section designated as section 658
10 of Public Law 104–208.



U. S. Department of Justice

Washington, D.C. 20530

FAX NOTE

TO: Rahm Emanuel, 456-2530
Dennis Burke, 456-7028
Christa Robinson, 456-6218

FROM: Nicholas M. Gess, Director
Office of Intergovernmental Affairs
Department of Justice
(202) 514-3465 (office)
(202) 514-2504 (facsimile)

SUBJECT: Lautenberg

PAGES: (including this page)

MESSAGE: Rahm, Dennis, Christa -- Wellstone is filing attached today as a Lautenberg fix. Basically he's doing Barr (retroactivity) not Stupak (official use). He's also not doing the substantive fix which we desperately need in order to assure proper enforcement and which the women's groups need as a counterbalance to Stupak and/or Barr. Nick

02/04/97 TUE 13:55 FAX

Post-It brand fax transmittal memo 7571		# of pages: 4
To: Pam Smith	From: Kristin Jennings	
Co.	Co.	
Dept:	Phone #	
Fax #	Fax #	

nal **Draft**
Version
Calendar No. _____

IN THE SENATE OF THE UNITED STATES -- 105th Cong., 1st Sess.

S.

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.

Mr. Wellstone of Minnesota introduced the following bill, which was referred to the Committee on _____

Viz:

Findings:

- (1) Spouses, ex-spouses, and current and former boyfriends commit over one million violent crimes against women every year, including assault, rape, and murder;
- (2) Approximately 28% of all women murdered in the United States each year are killed by current or former husbands or boyfriends;
- (3) Weapons are used in 30% of domestic incidents;
- (4) Domestic violence calls are one of the largest categories of calls to police each year, and, in some locations, up to on-third of all police time is spent responding to domestic calls;
- (5) Studies show that police are more likely to respond within 5 minutes if the offender is a stranger than if the offender is known to the victim and that, furthermore, police are more likely to take a formal report if the offender is a stranger;

(6) Studies show that only about 10% of spouses who are abused ever call the police and yet conjugal assaults account for 12 percent of all assaults that result in serious injury, 16 percent of all assaults requiring medical care, and 18 percent of assaults that result in the loss of at least a full day of work;

(7) Data compilation suggests that injuries in all domestic assaults are at least as severe as those suffered in 90 percent of violent felonies, although the overwhelming number of domestic violence injuries are considered to be only misdemeanors in most states;

(8) In the 104th Congress, Congress amended the federal law that regulates the lawful transfer and possession of firearms and ammunition so that an individual's conviction of a "misdemeanor crime of domestic violence" will prohibit that individual from possessing any firearms or ammunition and that will prohibit others from licensing or transferring firearms or ammunition to that person.

(9) "Misdemeanor crime of domestic violence" is defined 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 cohabitating with or has cohabitated with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.

(10) For the purposes of the statute, to be considered convicted of such an offense, a person must: i) have been represented by counsel or knowingly waived representation; and ii) have been tried by a jury or knowingly waived trial by a guilty plea or otherwise if entitled to a jury trial for the offense described;

(11) There are currently in place exceptions to the new law that may apply to an individual deemed to have been convicted of a

misdemeanor crime of domestic violence:

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 provision 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.

(13) Congress clearly intended for this law to apply to peace officers---the general exception to the law 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," does not apply to individuals convicted of a misdemeanor crime of domestic violence.

1 Section 1. Prospective Application of the Domestic Violence
2 Misdemeanor Conviction Firearms Prohibition from Date of
3 Enactment

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

8 Section 2. Definition

9 At section 921(a) of title 18 of the United States Code, delete
10 (33)(A) after "an offense that-" and replace with

4

- 1 (i) is punishable by imprisonment, other than "a crime
- 2 punishable for imprisonment for a term exceeding one year" as
- 3 described in sect. 922(g)(1) and 921(a)(20);
- 4 (ii) has, as an element, the use or attempted use of physical
- 5 force, or the threatened use of a deadly weapon; and
- 6 (iii) is committed by a current or former spouse, parent, or
- 7 guardian of the victim, by a person who is cohabitating with or
- 8 has cohabitated with the victim as a spouse, parent, or guardian
- 9 of the victim, or by a person similarly situated to a spouse,
- 10 parent, or guardian of the victim.

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**INTERNATIONAL BROTHERHOOD OF POLICE OFFICERS**

A DIVISION OF THE NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES, AFL/CIO

**100 BURGIN PARKWAY, QUINCY, MA 02169-4213
TEL. # 617/378-0220**

ATLANTA, GA. --- Charging that the "Omnibus Consolidated Appropriations Act of 1997" is unconstitutional, the International Brotherhood of Police Officers filed suit in U. S. District Court in the Northern District of Georgia today (Friday, January 31, 1997) seeking the immediate reinstatement of Fulton County Deputy Sheriff William Hiley who was terminated January 17, 1997.

The IBPO suit also requests the court to enjoin Sheriff Jacquelyn Barrett from taking any disciplinary action against any other member of its organization based on that Act.

Hiley, a member of IBPO Local 453, which represents all deputy sheriffs in Fulton County, had been a deputy sheriff in the county since August, 1980 and had permanent Civil Service status. Hiley was terminated because he had pled "no contest" in 1995 to a misdemeanor violation, involving a domestic violence charge.

Under the Gun Control Act amendment passed by Congress last September, any person found guilty of a domestic violence misdemeanor would not be allowed to possess firearms or ammunition. The controversial amendment is retroactive in perpetuity. In an interpretation issued by the Bureau of Alcohol, Tobacco and Firearms, the amendment includes all law enforcement officers.

IBPO Attorneys Brenda A. Raspberry and Robin Smith, who filed the suit, cited several reasons why they deem the amendment to the Gun Control Act of 1968 in the "Omnibus Consolidated Appropriations Act of 1997" as unconstitutional.

Attys. Raspberry and Smith, in the suit, stated the termination is a violation of the *Commerce Clause* of the U.S. Constitution because the amendment, in part, exceeds the power of Congress to regulate an area in which the states possess primary authority for defining and enforcing the criminal law.

The IBPO attorneys said the action also is in *violation of the 14th Amendment* because it singles out only law enforcement officers for immediate loss of jobs based on domestic violence.

(more)

IBPO Suit-----2

Another violation is of the 14th Amendment's *Equal Protection Clause*. Specifically, law enforcement officers lose their jobs without notice and without an opportunity to be heard.

"This is also a denial of their substantive due process," said Attorneys Raspberry and Smith.

"Particularly troubling is the '*ex-post facto*' application of this act to law enforcement officers," the attorneys stated. "They are being punished for acts that occurred before the amendment was even passed by Congress. This is a violation of the *Bill of Attainder Clause* of the U.S. Constitution as well."

"The *Bill of Attainder* is violated in that the Fulton County Sheriff's Department's enforcement of the legislation results in a penalty which attached to past and ineradicable action, serves the traditional punitive purpose of deterrence and has the effect of barring IBPO members from engaging in their specific profession", said Smith.

In the suit, the final constitutional claim alleges that this federal legislation amounts to an unconstitutional usurpation of the powers to hire and fire reserved to the states under the 10th Amendment.

The International Brotherhood of Police Officers, headed by President Kenneth T. Lyons, is the largest police union in the country. The IBPO also represents the City of Atlanta police officers.

16A Sun-Sentinel, Monday, February 10, 1997

OPINION**Sun-Sentinel**

*Dedicated to being the most valued
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Scott C. Smith, President & Publisher

Earl Maucker, Editor

Ellen Soeteber, Managing Editor

Kingsley Guy, Editorial Page Editor

EDITORIALS

Keep guns from hands of violent, with police officers no exception

Two words describe a move that's afoot to exempt police officers from a federal law prohibiting gun ownership by anyone convicted of domestic violence: bad idea. Law enforcement is a tough enough job for reasonable adults. It's no place for immature hot-heads who resort to violence as a way of solving problems.

A change in the 1968 Gun Control Act that was amended to a federal spending bill last year says anyone — including police officers — convicted of misdemeanor domestic violence cannot own or carry a gun, regardless of how long ago, or even if it occurred before the offender joined law enforcement. Theoretically, some current officers could lose their jobs as a result, but in reality, the greater effect is likely to be on future hires.

An attorney for the Florida Department of Law Enforcement has already begun laying the ground work for the legal obfuscation that will be rolled out on behalf of officers now serving. Craig Rockenstein cites questions about the law's provisions, such as the degree of proof required, and asks how it can be determined that the convicted person was represented by an attorney or "knowingly waived the right to counsel."

Meanwhile, area law enforcement agencies are conducting background checks in accordance with the law. The Palm Beach County Sheriff's Office, in addition to conducting national and state criminal history computer checks and personnel file searches, has

Despite the exceptions that make headlines, current hiring practices for officers appear to be sound.

asked deputies to return sworn statements on the topic. In Hollywood, officers have been asked for affidavits saying they have no domestic violence convictions.

Despite the glaring exceptions that make headlines, however, current hiring practices in the law enforcement community appear to be sound. Even as the Fraternal Order of Police has asked a federal judge to issue an injunction on the law until its constitutionality is heard, the executive director of the FOP says he is optimistic about the law's impact.

"I suspect there are very few police officers in the country who could be affected, perhaps in the hundreds," said Jim Pasco, executive director of the 277,000-member organization.

If so, that would be good news. But those few should not be exempted from the provisions of this law, despite efforts by two members of the U.S. House of Representatives to exempt them. Rep. Bart Stupak, D-Mich., wants to eliminate the portion of the law affecting police. Rep. Bob Barr, R-Ga., would abolish the retroactive part, making it apply to officers for actions since Sept. 30. Both changes are ill-advised and should be rejected by the House.

Review of gun law, amending it sought

Ban's retroactivity is being challenged

BY MARK BOWES

TIMES-DISPATCH STAFF WRITER

The National Fraternal Order of Police has filed suit in Washington in an effort to halt enforcement of the federal domestic violence gun ban until it can be constitutionally reviewed.

The injunction, filed Jan. 21 in U.S. District Court, challenges the law's retroactivity as unconstitutional. Although the law took effect Sept. 28, it affects anyone who was convicted years earlier of a misdemeanor domestic violence offense.

ence offense.

In addition, the national FOP is backing legislation introduced Jan. 8 by Rep. Robert L. Barr, R-Ga., a prominent opponent of gun control measures, to amend the law by eliminating the retroactivity clause. Barr was among the lawmakers who worked last year to modify the bill, which was introduced by U.S. Sen. Frank R. Lautenberg, D-N.J., and endorsed by President Clinton.

In past gun control measures, lawmakers included an exception for government personnel and law enforcement officials who need to carry guns to fulfill



Lautenberg

the requirements of their job.

However, Barr and his allies worked some changes into the law, including one that removed the official-use exemption for government personnel and law enforcement officers convicted of misdemeanor domestic violence.

Barr now believes the only way to fix the law is to make it apply to future offenses, so that anyone, including police officers, who has been convicted in the past of a domestic violence crime could legally possess a firearm.

Jim Pasco, executive director of the National Fraternal Order of Police, said his organization opposes the law because the retroactivity clause is in "all probability unconstitutional" and because "it constitutes an enforcement nightmare."

"We are very, very strong proponents of

strong laws to combat domestic violence," Pasco said. "We just don't feel like this one does the job. In fact to the contrary, we feel that it may set the cause back significantly."

Pasco said because a range of misdemeanor offenses might be connected to domestic violence, it could be difficult to determine which ones may cause the federal law to be applied.

For example, in some states, a misdemeanor or domestic violence offense could include breach of peace, trespassing, unlawful touching or simple assault.

"How do you know when you're looking at a person's rap sheet [whether a conviction] on its face was a violation of this domestic violence gun ban?" he said. "I mean it's just a law enforcement absurdity."



GUN SUPPORTER. U.S. Rep. Robert L. Barr, R-Ga., is leading the charge to modify the new law.

The right to bear arms

Effects of new federal law are far-reaching

BY MARK BOWES

TIMES-DISPATCH STAFF WRITER

Police officers have been stripped of their guns. Some gun owners no longer can buy firearms. Some hunters can't hunt legally. And certain holders of concealed weapon permits soon might have to disarm.

Those are some of the far-reaching consequences in Virginia and across the nation of a federal law that prohibits the possession of a gun by anyone with a domestic violence conviction, even if the conviction is for a misdemeanor.

Since the law was enacted in September, perhaps 10 Virginia law enforcement officers have lost their right to carry firearms. And state police say 151 potential gun buyers have been rebuffed in Virginia — all because they have misdemeanor domestic assault convictions.

The law doesn't discriminate between recent and past convictions. That's the problem, critics say: A person can't possess a gun, regardless of how long ago or under what circumstances he or she was convicted.

It also has altered who can get a permit to carry a concealed weapon. People who already hold such a permit probably will be denied when they try to renew it.

"The way we interpret it, you cannot even apply for a concealed weapon permit, even though it's a misdemeanor," said Maj. Michael Batten of the Henrico County Division of Police.

The law was designed to keep guns out of the hands of anyone with a history of domestic violence. But critics contend that some aspects of the law, such as its retroactivity clause, are unconstitutional.

The legislation's effect on law enforcement

officers, prison guards and members of the nation's armed forces is one of its most complicated issues.

The nation's basic gun control law, passed in 1968, always has included an exception for weapons used by government personnel in their official duties. But in the new legislation, added in September to a key appropriations bill to prevent a government shutdown, congressional Republicans removed the official-use exception for government employees and law enforcement officers.

"It's causing a lot of problems," said Bill Dunham, resident agent in charge of the Richmond office of the U.S. Bureau of Alcohol, Tobacco and Firearms.

"You could have had an argument with your wife 20 years ago, where she said you hit her, and you pay a \$25 fine and you think that's the end of it. But now you're basically precluded from owning a firearm now — with no recourse."

BILL DUNHAM

U.S. BUREAU OF ALCOHOL, TOBACCO AND FIREARMS



Dunham said his office had received about a dozen calls about the law, including several from unhappy gun owners.

"A variety of people have said, 'How can this be retroactive?' They had a conviction 15 years ago and now all of a sudden they can't possess a firearm to hunt. And they were not happy with it at all," he said.

"You could have had an argument with your wife 20 years ago, where she said you hit her, and you pay a \$25 fine and you think that's the end of it. But now you're basically precluded from owning a firearm now — with no recourse."

Typically, the law affects anyone found guilty of using, or attempting to use, physical force on an intimate, such as a spouse or child. Most law enforcement officials believe the law's basic premise is sound. But they say, it could use some fine-tuning.

"It's positive in that ... this enables us to take guns out of someone's hands who's been beating up their spouse, has threatened them or has a history of domestic violence," Dunham said. "I think that's

what the intention was.

"But the way it was written, it goes a little beyond that."

Advocates for victims of domestic violence applaud the law and believe police officers should be held to the same standards as the rest of the population. But they have reservations about the law's retroactivity.

"We absolutely believe that [police officers] should be held accountable under this law just like anyone else," said Nancy Jenkins, spokeswoman for the local chapter of the YWCA. "And if that means that they cannot perform their job, then that's a consequence of their actions."

"Perhaps it's even more important that this law applies to them," added Jenkins, who noted that firearms were involved in 150,000 incidents of domestic violence last year in the United States.

Making exceptions for certain groups of people, Jenkins said, "is sort of like saying, 'We want to enforce the law as long as it doesn't inconvenience anyone.'"

But Jenkins acknowledged that it might be unfair to penalize those who were convicted before the law was enacted.

So far, the law's impact on Virginia law enforcement officers appears minimal. Jim Gaudet, president of Virginia's Fraternal Order of Police, estimated that fewer than 10 offi-

ers statewide have been affected.

Two of the Richmond Police Department's 653 officers have been forced to give up their guns and have been assigned desk jobs. Both men were charged and convicted after they were hired. They voluntarily came forward after "the chief put a memo out ... advising all the officers of what the law was," said Lt. Frederic Pleasants of the department's personnel office.

Virginia State Police conducted background checks on all 1,685 of its sworn officers and found all to be in compliance. Likewise, police in Chesterfield and Henrico counties say they don't believe any of their officers are in jeopardy.

"We asked our officers to look at themselves, and if they have a domestic violence-type conviction, to let us know," said Chesterfield police inspector Steve Davis, who heads the department's Office of Professional Standards. "We're basing it on their honesty."

Henrico police officials haven't polled their force or conducted background checks, but authorities are confident that none of the division's 453 sworn officers is at risk. The department typically doesn't hire applicants with domestic violence convictions.

The Richmond, Henrico and Chesterfield sheriff's departments say they're addressing the requirements of the law.

Henrico Sheriff Toby Mathews said all 284 of his deputies came up clean after their backgrounds were checked.

Richmond Sheriff Michelle Mitchell directed said her staff to begin checking the department's 430 deputies. But when Mitchell realized how difficult and time consuming it was to check every deputy's background, she stopped the process until she could get a legal opinion to clarify what constitutes compliance.

The problem, Mitchell said, is that a standard computer background check often doesn't reveal whether an assault conviction was against a spouse or family member. Therefore, the original court records will have to be checked.

"It's just a slow and arduous process. And to me, that's the only way that I can truly say I'm in compliance with this law."

Of the 50 deputies checked so far, none has domestic assault convictions.

"But that's not to say they're not there," she said. "We're quite sure that out of 430 employees, we're bound to run across one."

Even Virginia's Department of Corrections is reviewing the personnel files of its employees.

"We've got a pool of about 6,700 people that need to be able to carry weapons that we will have to check," said spokesman David Botkins.

Scattered news reports from around the country suggest that, so far, a relatively small number of police officers have been removed from active duty because of the law. In Hampton Roads, at least one officer was found in violation — a 32-year-old Norfolk sheriff's deputy. And in Minneapolis, at least five of that city's police department's 900-member force were required to turn over their guns, according to news reports.

State police have been getting calls from people who have been prohibited from buying guns. Since 1989, state police have conducted instant criminal records checks on all would-be gun buyers in Virginia and rejects those who have felony criminal records.

Between Nov. 8 and Jan. 31, 151 people with misdemeanor domestic violence convictions had been rebuffed from buying guns, said Capt. Lewis Vass, commander of records management for Virginia State Police.

One person who challenged his denial had it successfully overturned, Vass said, "because there were no court records to verify what the actual outcome of the case was."

But others haven't been so lucky. "Most of them that come in or call [about their denials] say it's something new to them — that they've purchased firearms previously without any problem and got instant approvals," Vass said. "And the only thing we can tell them is that there has been a new federal law enacted."

The 151 rejections represent one-fifth of all gun-purchase denials in November and December. During those two months, 755 people were prohibited from buying guns out of 60,088 transactions.

"This was passed [before] we had any opportunity to comment on it," Vass said. "We found out about it after the act, and by state law we have to enforce it."

As for concealed weapon permits, several area localities are re-evaluating the application process. In Chesterfield, for example, "We've already approached our courts to [revamp] the statewide application process to get the appropriate questions in the concealed weapons permit applications," Davis said.

Although final approval is up to a circuit judge, police are required to conduct background checks on all applicants.

"I believe our next step is [to decide] what to do about those that have already been issued concealed weapon permits," Davis said. "It's our intent ... to wait until they renew [their permit], and re-do whatever background investigation that was done before, as opposed to going back and opening a little over 2,000 files."



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Past President PORAC

Berkeley, CA

Executive Director

ROBERT T. SCULLY

General Counsel

WILLIAM J. JOHNSON

Legislative Consultants

JULES BERNSTEIN

LINDA LIPSETT

DATE:

1/23/97

TO:

Dennis Burke

ORGANIZATION:

FAX NUMBER:

FROM:

Beth Weave

NUMBER OF PAGES INCLUDING COVER:

COMMENTS:

FYI - Rights
should be in by Tuesday.

**If you have any questions regarding this FAX,
please call (202)842-4420.**

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THANK YOU.

TO: Kari Butcher
FROM: Beth Weaver
DATE: January 23, 1997
RE: Question on Domestic Violence Gun Law

NAP0 QUESTION:

Last Fall, Congress passed a law prohibiting persons 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?

- 1) Strongly support
- 2) Somewhat support
- 3) Somewhat oppose
- 4) Strongly oppose
- 5) Don't know/Refused



FRATERNAL ORDER OF POLICE

NATIONAL LEGISLATIVE PROGRAM

309 MASSACHUSETTS AVENUE, N.E. • WASHINGTON, DC 20002
PHONE: (202) 547-8189 FAX: (202) 547-8190



GILBERT G. GALLEGOS
NATIONAL PRESIDENT

JAMES O. PASCO, JR.
EXECUTIVE DIRECTOR

BERNARD H. TEODORSKI
NATIONAL VICE PRESIDENT
CHAIRMAN, NATIONAL LEGISLATIVE COMMITTEE

29 January 1997

Willie Williams, Chief
Los Angeles Police Department
150 North Los Angeles Street
Los Angeles, CA 90012

Dear Chief Williams:

We have received numerous reports concerning your efforts to enforce the "Domestic Violence Gun Ban", particularly as it applies to officers who serve under your command.

This statute, which was effective September 30, 1996, provides that any individual, including police officers and military personnel, who has ever been convicted of a misdemeanor crime of domestic violence is prohibited from possession of a firearm. The Fraternal Order of Police opposed this legislation from the day it was first introduced by Senator Frank Lautenberg (D-NJ) on the premise that the statute is probably unconstitutional and would in any event be an enforcement nightmare. In furtherance of that position we have joined with Congressman Bob Barr (R-GA) in support of an amendment which would make this provision prospective only. On January 21, 1997, the National Fraternal Order of Police filed suit in Federal District Court with a view to enjoining the Federal government from enforcing the Domestic Violence Gun Ban pending a ruling on the constitutionality of that statute.

The Fraternal Order of Police does not condone any type of domestic violence, regardless of whether it is a felony or a misdemeanor. However, we also do not condone the termination of an employee, a good veteran officer who has been hired by his or her department or agency after a full and complete background check, because of this law.

page 2

In view of the forgoing, we urge you to consider the questionable equity and constitutionality of this statute as you allocate your scarce resources and set your enforcement priorities. After consideration, if you are still inclined to pursue immediate enforcement of this statute, we would respectfully suggest that, rather than scouring your personnel files for obscure cases of otherwise law abiding police officers who may have made a mistake at some point in the past, perhaps even years ago, you consider using this flawed statute against such notorious spousal abusers as may reside within your jurisdiction. For example, it has been reported that Mr. O.J. Simpson, a resident of the city of Los Angeles and convicted spousal abuser, possesses numerous firearms. It has been further reported that Mr. Simpson was given one of the firearms several years ago by a Captain with the Los Angeles Police Department. Mr. Simpson may well be in violation of 18 U.S.C. 922 (g) (9). It would appear that you, as Chief Law Enforcement Officer within your jurisdiction, have an obligation to ascertain the facts in this matter. *

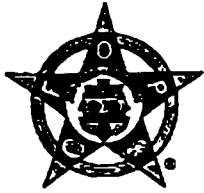
As an organization representing over 277,000 rank and file officers, we recognize your right and responsibility to set enforcement priorities within your jurisdiction. We would hope, however, that you would consider looking to the substance rather than the shadow of spousal abuse and use this flawed statute to the best and most cost effective ends.

We would be happy to discuss this matter further at your convenience.

Sincerely,



Gilbert G. Gallegos
National President



FRATERNAL ORDER OF POLICE

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



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NATIONAL VICE PRESIDENT
CHAIRMAN, NATIONAL LEGISLATIVE COMMITTEE

JAMES O. PASCO, JR.
EXECUTIVE DIRECTOR

15 January 1997

The Honorable Bart Stupak
United States House of Representatives
Washington, DC 20515

Dear Congressman Stupak,

I am writing on behalf of the 277,000 members of the Fraternal Order of Police regarding your proposed amendment to the "Domestic Violence Offender Gun Ban," H.R. 445, which would restore the "official use" exemption for law enforcement officers and military personnel. We appreciate your effort to effect a solution to what is clearly a serious problem for the entire law enforcement community. The F.O.P.'s concerns about the new law, which prohibits the possession of firearms to persons who have been convicted of a misdemeanor crime were first expressed in July 1996, when the Executive Board of the Fraternal Order of Police voted unanimously to oppose the Lautenberg amendment due to serious questions regarding the constitutionality of the law. We continue to oppose the underlying legislation, which has been made all the more difficult for law enforcement by deleting the 925(a) official use exemption and applying it to convictions prior to the date of enactment.

As police officers, we understand the cowardice and repugnance of domestic violence, and regrettably have seen its results first-hand. No police officer looks forward to answering a call involving a "domestic." We support, as you do, the vigorous prosecution of domestic violence offenders--whom we as police officers arrest--to the fullest extent of the law. The F.O.P. does not condone any type of domestic violence, regardless of whether it is a felony or a misdemeanor; neither do we condone the termination of an employee, a good, veteran officer who has been hired by his or her department after a full and complete background check, because of this new law.

Therefore, the F.O.P. strongly supports H.R. 26, introduced by Congressman Bob Barr, which clarifies Congressional intent with respect to the new legislation by making it clear that the prohibition applies only to offenses that were committed on or after the law's passage. Currently, the statute is being interpreted to impose a firearms disability on any person with such a conviction. This creates an enforcement nightmare--a person who, twenty years ago, plead

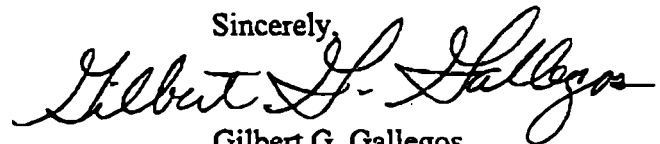
guilty to a misdemeanor offense could not have possibly known that his conviction would later result in a firearms disability. For a law enforcement officer or soldier, it could jeopardize his or her entire career!

We believe that, by supporting Congressman Barr's amendment, we can make this new law enforceable, effective, equitable, and constitutional by applying it prospectively. The "Domestic Violence Offender Gun Ban" states that, in order to be a conviction for the purposes of imposing a firearms disability, the offender must have been represented by an attorney before a jury. By making the disabling provision of the law prospective, every individual facing a misdemeanor charge of domestic violence will be aware that his or her crime carries with it a serious penalty--the loss of the Constitutional right to keep and bear arms, without disabling a potentially large number of persons who were convicted without this knowledge.

We feel that supporting an amendment making the application of the disability prospective for all persons is the best and most immediate way to address the most difficult part of the law--its equitable enforcement. Your commitment to rank-and-file law enforcement officers is exemplary, and, on their behalf, I would ask that you consider working with Congressman Barr, H.R. 26 in order to help them as you have done so many times in the past.

Again, I want to sincerely thank you for your effort to resolve this situation. Law enforcement is fortunate to have such a strong advocate in Congress. We will continue to work with you and Congressman Barr on this issue. If I can be of any service, please do not hesitate to contact me or Executive Director Jim Pasco at (202) 547-8189. Thank you for your continued support for rank-and-file officers.

Sincerely,



Gilbert G. Gallegos
National President

**INTERNATIONAL BROTHERHOOD OF POLICE OFFICERS****AFFILIATED WITH THE SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO**2011 Crystal Drive, Suite 4206
Arlington, VA 22202Telephone: 703/979-0290
Fax 703/979-0294FOR IMMEDIATE RELEASE:
January 17, 1997Contact:
Chris Donnellan
(703) 979-0290**TBPO ENDORSES POLICE
"OFFICIAL USE" BILL**

The International Brotherhood of Police Officers (IBPO) today announced their support for a bill introduced by Representative Bart Stupak, which will reinstate the "official use" exception for law enforcement officers to the recently passed domestic violence bill.

The Stupak bill, HR 445, would allow sworn law enforcement officers to use their service weapons for official on-duty use, as originally defined in the 1968 Gun Control Act.

The recently signed legislation sponsored by Senator Lautenberg prohibits persons convicted of domestic violence misdemeanors from possessing firearms.

"The members of the law enforcement community are being singled out because they are the only individuals who will lose their jobs if they can no longer possess a firearm," said Kenneth T. Lyons, President of the IBPO. "For almost thirty years, gun control legislation has made an exception for law enforcement and the military."

A proposal by Representative Barr (R-GA) to abolish only the retroactive application of the domestic violence gun prohibition was denounced by President Lyons. "The IBPO believes that the legislation offered by Congressman Barr does little to bring back the "official use" exception", stated Lyons.

The International Brotherhood of Police Officers is the largest police union in the AFL-CIO.



**U.S. Department of Justice
Office of Legislative Affairs**

Office of the Assistant Attorney General

Washington, D.C. 20530

To: Dennis Burke
Fr: Nick Cess

FAM5:BARR:BARR.001

H.L.C.

105TH CONGRESS
1ST SESSION

H. R. _____

IN THE HOUSE OF REPRESENTATIVES

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

A BILL

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

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

F:\M5\BARR\BARR.001

H.L.C.

2

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”.



U. S. Department of Justice

Washington, D.C. 20530

FACSIMILE COVER SHEET

TO: Dennis Burke

FROM: Nicholas M. Gess
Director
Office of Intergovernmental Affairs
TELEPHONE: (202) 514-3465
FACSIMILE: (202) 514-2504

DATE: January 15, 1997

SUBJECT: Lautenberg

PAGES: (Including this cover sheet)

REMARKS: Dennis - Copy of amended complaint (with new lawyers) filed in the LA County Deputy Sheriffs Lautenberg lawsuit. Basically nothing much new.
Nick

A handwritten signature, likely "Nick", written in dark ink. The signature is stylized and appears to be written over a horizontal line.

1 JS\PC1226.LAK
 2 GREEN & SHINEE, A.P.C.
 3 RICHARD A. SHINEE
 4 BAR NO. 62767
 5 Attorneys at Law
 6 16055 Ventura Blvd., #1000
 7 Encino, CA 91436
 8 (818) 986-2440

9 Attorneys for Plaintiffs

10 UNITED STATES DISTRICT COURT
 11 CENTRAL DISTRICT OF CALIFORNIA

12 96 - 9054 HLH (CWx)

13 ASSOCIATION FOR LOS ANGELES
 14 DEPUTY SHERIFFS ("ALADS"); DOE
 15 1; DOE 2; DOE 3,

16 Plaintiffs,

17 v.

18 SHERMAN BLOCK, Sheriff of the
 19 Los Angeles County Sheriff's
 20 Department; LOS ANGELES COUNTY
 21 SHERIFF'S DEPARTMENT; COUNTY
 22 OF LOS ANGELES,

23 Defendants.

Case No.

COMPLAINT FOR DECLARATORY AND
 INJUNCTIVE RELIEF

[28 U.S.C. §2201; 18 U.S.C.
 §921, §921(a), §922, §922(d)
 and §922(g); F.R.C.P. 2]

24 INTRODUCTION

25 Plaintiffs Doe 1, Doe 2 and Doe 3 (who are each
 26 citizens of the United States), together with the Association for
 27 Los Angeles Deputy Sheriffs ("ALADS"), the Union representative
 28 of the individual Plaintiffs and of all deputy sheriffs in the
 County of Los Angeles who are members of Bargaining Unit 611,
 hereby bring an action for declaratory relief and injunctive

1 relief on the basis of newly passed Federal legislation entitled
2 "The Omnibus Consolidated Appropriations Act of 1997" in which
3 one part of the Act amends the Gun Control Act of 1968. (18
4 U.S.C. §§921(a), 922(d), and 922(g)). The amendments to the
5 United States Code passed by Congress have been interpreted by
6 the Bureau of Alcohol, Tobacco and Firearms to mean that persons
7 who have been convicted of misdemeanor domestic violence,
8 including law enforcement officers, cannot possess a firearm or
9 ammunition and further that the amendments prohibit the Sheriff's
10 Department from issuing firearms or ammunition to such persons.
11 While the Federal legislation became effective September 30,
12 1996, the prohibition against possessing a firearm, as
13 interpreted by the Bureau of Alcohol, Tobacco and Firearms, and
14 enforced by the Los Angeles County Sheriff's Department, applies
15 to convictions which occurred before the statute's enactment.
16 The prohibition has been interpreted to apply no matter how long
17 ago a conviction occurred involving an issue concerning domestic
18 violence.

19 Plaintiffs Doe 1, Doe 2 and Doe 3, as a consequence of
20 the enactment of the statute and its enforcement by the Sheriff's
21 Department, have been relieved of all peace officer duties by the
22 Sheriff's Department and while they presently retain their rank
23 and employment, the Sheriff's Department has taken custody of
24 Plaintiffs' County-issued firearms and ammunition and the
25 Plaintiffs have been assigned to duties normally performed by
26 civilians and Plaintiffs have been issued civilian
27 identification. The Sheriff's Department has indicated that it
28 has a long-standing policy that a sworn member of the Department

1 must have the ability (both physical and legal) to carry a
2 firearm in order for an employee to retain the status of a sworn
3 deputy sheriff. It is the belief of Plaintiffs, including ALADS,
4 as the representative of Plaintiffs and all members of Bargaining
5 Unit 611 similarly situated, that a personnel action in the form
6 of termination and/or demotion to a civilian position will be
7 taken against Plaintiffs Doe 1, Doe 2, Doe 3 and other similarly
8 situated deputies, if it is determined that they are legally
9 precluded from possessing a firearm on the basis of the newly
10 enacted Federal legislation.

11 PARTIES

12 1. Plaintiff, DOE 1, is a citizen of the United
13 States residing in Los Angeles County and within the jurisdiction
14 of the United States District Court for the Central District of
15 California. At all times relevant herein, Plaintiff Doe 1 was a
16 duly sworn peace officer and deputy sheriff employed by the Los
17 Angeles County Sheriff's Department and a member in good standing
18 of the Association for Los Angeles Deputy Sheriffs (hereinafter
19 "ALADS"). Deputy Doe 1 is a permanent civil service employee,
20 having continuously held his position as a deputy sheriff with
21 the Sheriff's Department from on or about June 1, 1983 to the
22 present and holds a vested interest in his position.

23 2. Plaintiff DOE 2 is a citizen of the United States
24 residing in Orange County and within the jurisdiction of the
25 United States District Court for the Central District of
26 California. At all times relevant herein, Plaintiff Doe 2 was a
27 duly sworn peace officer and deputy sheriff employed by the Los
28 Angeles County Sheriff's Department and a member in good standing

1 of ALADS. Deputy Doe 2 is a permanent civil service employee,
2 having continuously held his position as a sworn deputy sheriff
3 with the Sheriff's Department from on or about March 17, 1977, to
4 the present and holds a vested and substantial property interest
5 in his official position as a deputy sheriff.

6 3. Plaintiff DOE 3 is a citizen of the United States
7 residing in Los Angeles County and within the jurisdiction of the
8 United States District Court for the Central District of
9 California. At all times relevant herein, Plaintiff Doe 3 was a
10 duly sworn peace officer and deputy sheriff employed by the Los
11 Angeles County Sheriff's Department and a member in good standing
12 of ALADS. Deputy Doe 3 is a permanent civil service employee,
13 having continuously held his position as a deputy sheriff with
14 the Sheriff's Department from on or about August 1, 1980 to the
15 present and holds a vested and substantial property interest in
16 his official position as a deputy sheriff.

17 4. Plaintiff THE ASSOCIATION FOR LOS ANGELES DEPUTY
18 SHERIFFS ("ALADS") is now, and at all times herein mentioned was,
19 a recognized employee organization pursuant to California
20 Government Code §3500 et seq. and the certified majority
21 representative for non-supervisory peace officers who are members
22 of Bargaining Unit 611 in the County of Los Angeles. ALADS has,
23 as one of its primary purposes, the representation of deputy
24 sheriffs who are members of the Los Angeles County Sheriff's
25 Department in their labor relations with respect to their
26 governmental employer and is concerned exclusively with wages,
27 hours and working conditions. Furthermore, individuals who are
28 members of and comprise such Association are full-time peace

1 officers as that term is defined in Chapter 4.5 (commencing with
2 Section 830, Title III, Part 2) of the California Penal Code.

3 5. Plaintiff ALADS is, and at all times herein
4 mentioned was, a corporation duly organized and existing under
5 and by virtue of the laws of the State of California, doing
6 business as The Association for Los Angeles Deputy Sheriffs.
7 ALADS brings this suit in its representative capacity for those
8 deputies who are similarly situated as Does 1 through 3.

9 6. Defendant SHERMAN BLOCK (hereinafter "Block") at
10 all times herein mentioned was, and is now, the duly elected
11 Sheriff of the County of Los Angeles. In his capacity as Sheriff
12 of Los Angeles County, Defendant Block is responsible for the
13 establishment and implementation of the policies and procedures
14 of the Los Angeles County Sheriff's Department and, for purposes
15 of this action, is a policy-making official of the County of Los
16 Angeles, with regard to the customs, policies, practices and
17 procedures at issue herein.

18 7. Defendant LOS ANGELES COUNTY SHERIFF'S DEPARTMENT
19 (hereinafter "Department") is, and at all times herein mentioned
20 was, the duly authorized law enforcement agency for the County of
21 Los Angeles, charged with the responsibility of enforcing the law
22 in the County of Los Angeles and with the responsibility of
23 hiring, firing, promoting, demoting and regulating the other
24 terms and conditions of employment of all peace officers employed
25 by the Sheriff's Department.

26 8. Defendant COUNTY OF LOS ANGELES (hereinafter
27 "County") is a political subdivision of the State of California
28 constituted and acting under the laws of the State of California.

1 The complaint for relief as alleged herein is the result of
2 customs, policies, practices, and procedures instituted and
3 carried out by Sheriff Block and his subordinate officers, who
4 are all employed by the Sheriff's Department and the County. The
5 actions of the Defendants herein were embraced, approved and
6 ratified by Sheriff Block, the Sheriff's Department and the
7 County of Los Angeles in terms of the actions taken as a
8 consequence of the Federal legislation enacted in 1996, pursuant
9 to Title 18 U.S.C. §§921(a), 922(d) and 922(g).

10 JURISDICTION AND VENUE

11 9. Jurisdiction of this Court is invoked pursuant to
12 28 U.S.C. §1331. The declaratory and injunctive relief sought
13 arises out of the Federal question involving Defendants'
14 interpretation, application and enforcement of the Omnibus
15 Consolidated Appropriations Act of 1997 as it amends the Gun
16 Control Act of 1968, which enforcement has deprived Plaintiffs
17 Doe 1, Doe 2 and Doe 3 of their ability to perform their normal
18 peace officer duties as sworn members of the Sheriff's Department
19 for the County of Los Angeles.

20 10. Venue in this matter lies in the District Court
21 for the Central District of California pursuant to 28 U.S.C.
22 §1391 as Plaintiffs reside in the District, the Defendants are
23 residents of the District, and the acts and omissions which give
24 rise to this controversy occurred within this judicial district.

25 FACTS COMMON TO ALL CAUSES OF ACTION

26 11. In or about the month of September, 1996, the
27 United States Congress enacted legislation entitled "The Omnibus
28 Consolidated Appropriations Act of 1997" (hereinafter the

1 "Omnibus Act") in which certain amendments were made to the Gun
2 Control Act of 1968 (hereinafter referred to as the "Gun Control
3 Act") (18 U.S.C. §§921 and 922.)

4 12. The portion of the Omnibus Act that amended the
5 Gun Control Act made it unlawful for any person convicted of a
6 "misdemeanor crime of domestic violence" to ship, transport,
7 possess or receive firearms or ammunition. The Omnibus Act also
8 makes it unlawful for any person to sell or otherwise dispose of
9 a firearm or ammunition to any person knowing or having
10 reasonable cause to believe that the recipient has been convicted
11 of such a misdemeanor. The amendments by the Omnibus Act to the
12 Gun Control Act have been interpreted by the Bureau of Alcohol,
13 Tobacco and Firearms to apply to all law enforcement officers at
14 both the state and local level.

15 13. At all times herein mentioned, the Omnibus Act
16 with its amendments to the Gun Control Act as enforced by
17 Defendants apply to all past and future convictions involving
18 domestic violence, including misdemeanors which involve the use
19 or attempted use of force (e.g., simple assault, assault and
20 battery), whether or not the statutes or local ordinances in the
21 State of California (e.g., California Penal Code §242)
22 specifically define the offense as a domestic violence
23 misdemeanor.

24 14. At all times herein mentioned, subsequent to the
25 passage of the Omnibus Consolidated Appropriations Act of 1997,
26 amending the Gun Control Act of 1968 (18 U.S.C. §§921(a), 922(d)
27 and 922(g)), the Bureau of Alcohol, Tobacco and Firearms issued
28 an "open letter" to state and local law enforcement officials

1 regarding the new law that would prevent officers from carrying
2 firearms. While the letter does not have the force of law and
3 does not represent final regulations that have been published,
4 the open letter was intended to explain how the new Federal
5 legislation would be interpreted as applied to law enforcement.

6 15. At all time herein mentioned, the open letter to
7 all state and local law enforcement officials from the Department
8 of Treasury, Bureau of Alcohol, Tobacco and Firearms, provides in
9 pertinent part:

10 " . . . One part of the Act amended the
11 Gun Control Act of 1968 (GCA) to make it
12 unlawful for any person convicted of a
13 'misdemeanor crime of domestic violence' to
14 ship, transport, possess, or receive firearms
15 or ammunition. It also makes it unlawful for
16 any person to sell or otherwise dispose of a
17 firearm or ammunition to any person knowing
18 or having reasonable cause to believe that
19 the recipient has been convicted of such a
20 misdemeanor. This new prohibition does apply
21 to all law enforcement officers. (Emphasis
22 theirs.)

23 . . .
24 New disability applies to law enforcement
25 officers.

26 In addition, the Act amended the GCA
27 (Gun Control Act of 1968) so that employees
28 of government agencies convicted of

1 qualifying misdemeanors would not be exempt
2 from this new disability with respect to
3 their receipt or possession of firearms or
4 ammunition. Thus, law enforcement officers
5 and other government officials who have been
6 convicted of a qualifying misdemeanor will
7 not be able to lawfully possess or receive
8 firearms or ammunition for any purpose,
9 including performing their official duties.
10 This disability applies to firearms and
11 ammunition issued by government agencies,
12 firearms and ammunition purchased by
13 officials for use in performing their
14 official duties, and personal firearms and
15 ammunition possessed by such officials.

16 In view of this amendment's effect on
17 law enforcement officers, your department may
18 want to determine if any employee who is
19 authorized to carry a firearm is subject to
20 this disability and what appropriate action
21 should be taken. Employees subject to this
22 disability must immediately dispose of all
23 firearms and ammunition in their possession.
24 The continued possession of firearms and
25 ammunition by persons under this disability
26 is a violation of law and may subject the
27 possessor to criminal penalties. In
28 addition, such firearms and ammunition are

1 subject to seizure and forfeiture. [Emphasis
2 theirs.]"

3 16. In response to the passage of the Omnibus Act and
4 its amendments to the Gun Control Act (Title 18 U.S.C. §§921(a),
5 922(d) and 922(g)), the Sheriff's Department issued a broadcast
6 in November, 1996, to all concerned (including sworn) personnel
7 entitled "New Federal Legislation - Peace Officers Convicted of
8 Penal Code §273.5 May Not Lawfully Possess Firearms". Said
9 broadcast advised Sheriff's Department personnel of the
10 congressional enacted amendments to 18 U.S.C. §§921(a), 922(d)
11 and 922(g) and the prohibition, which includes law enforcement
12 officers, prohibiting persons who have been convicted of a
13 misdemeanor involving domestic violence to possess a firearm or
14 ammunition and prohibiting the Department from issuing firearms
15 or ammunition to such persons. The Department further announced
16 that any deputy sheriff who has suffered a conviction shall after
17 the expiration of ninety (90) days of notice be terminated from
18 employment or demoted to a non-sworn position where a firearm is
19 not required.

20 17. At all times herein mentioned, the Sheriff's
21 Department broadcast issued on or about November 14, 1996,
22 directed that all sworn personnel who have prior convictions of
23 violations of California Penal Code §273.5 as well as convictions
24 of Penal Code §242 and any other Penal Code convictions which
25 have as an element, force, attempted force or threat with a
26 deadly weapon, if the offense was committed against a current or
27 former spouse, child or cohabitant, to report this fact
28 immediately to their Unit Commander.

1 18. Immediately subsequent to the issuance of the
2 Sheriff's Department broadcast as referenced herein, Plaintiffs
3 Doe 1, Doe 2 and Doe 3 were each individually advised by his
4 respective Chief, unit commander or supervisor, at the Sheriff's
5 Department's direction, that each was being relieved of all peace
6 officer duties and would be reassigned to civilian duties and
7 that each Plaintiff would have his badge and gun removed by the
8 Sheriff's Department. On the same occasion on which each
9 Plaintiff was relieved of his respective peace officer duties,
10 each Plaintiff was advised by a Department supervisor that, at
11 the end of a ninety (90) day period, each would be terminated
12 from employment or, in the alternative, demoted to the non-sworn
13 position of Custody Assistant.

14 19. In or about the month of May, 1991, Plaintiff Doe
15 1 pled "no contest" to a misdemeanor violation of California
16 Penal Code §273.5 involving a domestic violence charge. As a
17 consequence of the misdemeanor conviction, Plaintiff Doe 1 was
18 ordered to pay a fine of \$432.50, court costs and restitution, as
19 well as to serve three years of summary probation, which
20 probation ended in 1994. Subsequent to that time, Plaintiff Doe
21 1 was administratively disciplined by the Sheriff's Department
22 and returned to full duty as a sworn deputy sheriff, assigned to
23 a Bonus pay position, in which capacity he has been working since
24 that time.

25 20. On or about July 9, 1992, Plaintiff Doe 2 pled "no
26 contest" to a misdemeanor violation of Penal Code §273.5 in
27 relation to a domestic violence allegation concerning his spouse.
28 As a consequence of the misdemeanor conviction, Plaintiff Doe 2

1 was ordered to pay \$200 in court costs and restitution, complete
2 sixty-two (62) hours of community service with Caltrans, and
3 complete a three year summary probation (non-supervised) which
4 ended in 1995. Subsequent to that date, Plaintiff Doe 2 was
5 administratively disciplined by the Sheriff's Department and has
6 continuously performed his duties as a sworn deputy sheriff
7 assigned to a Bonus Pay position, in which capacity he has been
8 working with the Department since that time.

9 21. In or about the year of 1993, Plaintiff Richard
10 Doe 3 was convicted of a misdemeanor violation of Penal Code
11 §273.5 involving an allegation of domestic violence concerning
12 his common law wife. Plaintiff Doe 3, as a consequence of said
13 misdemeanor conviction, was ordered to pay a fine, restitution
14 and court costs and to serve a summary probation sentence.
15 Subsequent to his conviction, Plaintiff Doe 3 was
16 administratively disciplined by the Sheriff's Department and has
17 continuously performed his duties as a sworn deputy sheriff since
18 that time.

19 FIRST CAUSE OF ACTION

20 (Violation of Commerce Clause)

21 [U.S. Constitution, Article 1, Section 8, Clause 3]

22 22. Each and every allegation set forth in Paragraphs
23 1 through 21, inclusive, is incorporated herein by reference,
24 repeated and repled as though fully set forth at length.

25 23. At all times herein mentioned, it is the belief of
26 Plaintiffs, and each of them, and therefore Plaintiffs allege on
27 information and belief, that the amendments made to Title 18
28 U.S.C. §§921 and 922 by Congress in enacting the Omnibus

1 Consolidated Appropriations Act of 1997, amending the Gun Control
2 Act of 1968, violate the Commerce Clause of the United States
3 Constitution, in part or in total, in that the legislation in
4 part or in total, exceeds the power of Congress to regulate an
5 area in which the states possess primary authority for defining
6 and enforcing the criminal law.

7 24. At all times herein mentioned, Plaintiffs, and
8 each of them, are informed and believe and therefore allege on
9 information and belief that the Omnibus Consolidated
10 Appropriations Act of 1997, amending 18 U.S.C. §§921 and 922
11 exceeds the authority of Congress to regulate commerce among the
12 several states under the Federal Constitution Commerce Clause,
13 Article 1, Section 1, Clause 3, in relation to the prohibition
14 extended to local law enforcement officers, making it unlawful
15 for any person convicted of a misdemeanor crime of domestic
16 violence to ship, transport, possess, or receive firearms or
17 ammunition.

18 SECOND CAUSE OF ACTION

19 (Violation of Equal Protection and Due Process Clause)

20 [Fourteenth Amendment, U.S. Constitution]

21 25. Each and every allegation set forth in Paragraphs
22 1 through 24, inclusive, is incorporated herein by reference,
23 repeated and repled as though fully set forth herein at length.

24 26. At all times herein mentioned, when Congress
25 enacted the Omnibus Consolidation Appropriations Act of 1997,
26 amending the Gun Control Act of 1968, said legislation, as
27 enforced by the Sheriff's Department and the County has a
28 disparate and unequal impact on Plaintiffs Doe 1, Doe 2 and Doc 3

1 in that each of them, by virtue of said legislation, stands to
2 lose his employment and career as a law enforcement officer with
3 the Sheriff's Department of the County of Los Angeles and any
4 other law enforcement agency with the State of California, as
5 compared to other members of the population who are not peace
6 officers and therefore not precluded from practicing their
7 profession as a consequence of the Federal legislation.

8 27. At all times herein mentioned, by virtue of the
9 Sheriff's Department's enforcement of the newly enacted Omnibus
10 Consolidation Appropriations Act of 1997, amending the Gun
11 Control Act of 1968, Plaintiffs Doe 1, Doe 2 and Doe 3 stand to
12 lose their law enforcement positions with the Los Angeles County
13 Sheriff's Department, without notice and opportunity to respond
14 to the impact of the Federal legislation, depriving Plaintiffs of
15 their peace officer duties and position upon the enactment of the
16 Federal legislation by Congress and its enforcement by the
17 Sheriff's Department.

18 THIRD CAUSE OF ACTION

19 (Violation of Ex Post Facto Clause)

20 [U.S. Constitution, Article 1, Section 9, Clause 3;

21 Section 10, Clause 1]

22 28. Each and every allegation set forth in Paragraphs
23 1 through 27, inclusive, is incorporated herein by reference,
24 repeated and repled as though fully set forth herein at length.

25 29. At all times herein mentioned, Plaintiffs, and
26 each of them, are informed and believe and therefore allege on
27 information and belief that the amendments to the Gun Control
28 Act, as applied to Plaintiffs Doe 1, Doe 2 and Doe 3, and other

1 members of ALADS who are similarly situated, violates the ex post
2 facto clause of the United States Constitution in that the
3 Sheriff's Department's enforcement of the legislation results in
4 the imposition of penalties as to Plaintiffs Doe 1, Doe 2 and Doe
5 3 as set forth hereinabove, to acts and convictions occurring
6 before the enactment of the legislation. The Sheriff's
7 Department's retroactive application of the Federal legislation
8 results in an additional and severe penalty to Plaintiffs Doe 1,
9 Doe 2 and Doe 3, to wit: prospective termination and/or demotion
10 by virtue of the retrospective application of the Omnibus Act,
11 all in violation of the ex post facto clause of the Federal
12 Constitution.

13 FOURTH CAUSE OF ACTION

14 (For Declaratory and Injunctive Relief)

15 [28 U.S.C. §2201; 18 U.S.C. §921(a), §922(d) and §922(g)]

16 30. Each and every allegation set forth in Paragraphs
17 1 through 29, inclusive, is incorporated herein by reference,
18 repeated and repled as though fully set forth herein at length.

19 31. A bonafide and substantial controversy exists in
20 that Defendants claim they may legally do all of the things as
21 herein before described, and specifically, may subject Plaintiffs
22 Doe 1, Doe 2 and Doe 3, and each of them, to loss of each of
23 their respective duties as a sworn peace officer, the loss of the
24 accoutrements of their profession (e.g., their gun and badge) and
25 ultimately the loss of their employment as sworn deputy sheriffs
26 and/or the demotion of each Plaintiff to a non-sworn civilian
27 position of Custody Assistant on the basis of the Omnibus
28 Consolidated Appropriations Act of 1997 which amends the Gun

1 Control Act of 1968. On the other hand, Plaintiffs Doe 1, Doe 2
2 and Doe 3 and Plaintiff ALADS (as the individual Plaintiffs'
3 representative) claim that the enforcement of the Omnibus Act
4 violates the Commerce Clause and the ex post facto clause of the
5 Federal Constitution and further denies Plaintiffs Doe 1, Doe 2
6 and Doe 3 equal protection and due process as guaranteed by the
7 14th Amendment of the Federal Constitution. A judicial
8 declaration is therefore requested, determining the rights and
9 duties of the parties with respect to the controversy herein,
10 pursuant to 18 U.S.C. §§921 and 922.

11 FIFTH CAUSE OF ACTION

12 (Injunctive and Equitable Relief)

13 [18 U.S.C. §921(a), §922(d) and §922(g), F.R.C.P. 2]

14 32. Each and every allegation set forth in Paragraphs
15 1 through 31, inclusive, is incorporated herein by reference,
16 repeated and repled as though fully set forth herein at length.

17 33. At all times herein mentioned, Plaintiffs Doe 1,
18 Doe 2 and Doe 3 each stand to suffer the irreparable injury as a
19 consequence of the Sheriff's Department's relieving Plaintiffs
20 Doe 1, Doe 2 and Doe 3 of peace officer duties, and of their
21 weapons and law enforcement identification and as a consequence
22 of the Department's proposed demotion of each Plaintiff to a non-
23 sworn civilian position entitled "Custody Assistant" within
24 ninety (90) days from November 13, 1996.

25 34. At all times herein mentioned, Petitioners Doe 1,
26 Doe 2, Doe 3 and Plaintiff ALADS have no plain, speedy or
27 adequate remedy in the ordinary course of law, other than the
28 relief sought by this Complaint to enjoin Defendants and each of

1 them from depriving Plaintiffs Doe 1, Doe 2 and Doe 3 of the
2 protected property interest each Plaintiff maintains in his
3 position as a permanent employee and sworn deputy sheriff with
4 the Sheriff's Department.

5 35. Pursuant to F.R.C.P. 2, this Court is authorized
6 to enter appropriate equitable relief and specifically to enjoin
7 Defendants from enforcement of the amendment to the Gun Control
8 Act found in the Appropriations Act of 1997 against Plaintiffs by
9 either relieving Plaintiffs of their respective peace officer
10 duties, discharging, demoting or taking other disciplinary action
11 against Plaintiffs Doe 1, Doe 2 and Doe 3, or against any other
12 similarly situated Los Angeles County Deputy Sheriff represented
13 by Plaintiff ALADS on the basis of the Omnibus Consolidated
14 Appropriations Act of 1997.

15 36. By reason of the heretofore described acts and
16 omissions of the individual Defendants, and each of them,
17 Plaintiffs were required to retain the services of counsel to
18 institute and prosecute this action and to render legal
19 assistance to Plaintiffs that they may vindicate the deprivation
20 of their heretofore mentioned constitutional rights. By reason
21 thereof, Plaintiffs request payment by Defendants, and each of
22 them, a reasonable sum as and for attorneys fees.

23
24 WHEREFORE, Plaintiffs request this Court enter judgment
25 in their favor and against the Defendants as follows:

26 1. Entering preliminary and permanent injunctions or
27 other equitable relief consisting of appropriate orders,
28 prohibiting Defendants from relieving Plaintiffs Doe 1, Doe 2 and

1 Doe 3 from their peace officer duties, discharging, demoting or
2 taking other disciplinary action against Plaintiffs Doe 1, Doe 2
3 and Doe 3, or any other member of Plaintiff ALADS' organization,
4 whether in the form of relief from peace officer duties,
5 deprivation of a gun and badge, discharge, demotion or any other
6 punitive action on the basis of the Omnibus Consolidated
7 Appropriations Act of 1997 amending the Gun Control Act of 1968,
8 as enforced against Plaintiffs by Defendants;

9 2. For judicial declarations, setting forth the
10 rights and duties of the parties within the parameters described
11 in this Complaint and Causes of Action 1 through 5, inclusive;

12 3. Awarding attorneys fees to Plaintiffs;

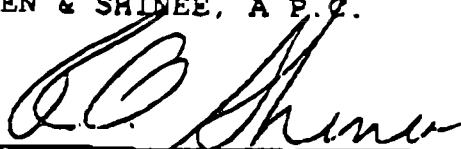
13 4. Awarding costs of suit; and

14 5. Awarding such other further relief as this Court
15 may deem appropriate and justified.

16
17 DATED: December 26, 1996

Respectfully submitted,

GREEN & SHINEE, A P.C.

18
19
20
21 By: 

RICHARD A. SHINEE
Attorneys for Plaintiffs

Future Steps -- Enforcing Federal Law and Halting the Legalization Movement

Based on the recommendations of the Attorney General, the interagency working group has concluded that a lawsuit by the United States Government seeking to enjoin the California/^{Arizona} initiative~~s~~ would not be successful and is a very impractical pursuit as a part of our overall strategy. In the same respect, interpreting Federal law to preempt these state initiatives, we strongly believe, would not withstand scrutiny in the courts.

The interagency group believes that enforcement of Federal law and the strategic objectives outlined above is a more effective and practical response to this issue. In addition, we plan to propose legislative changes to Federal law, as appropriate, to prevent states from authorizing practitioners to recommend or prescribe Schedule I drugs.

We believe that the recommendations provided in this strategy will send a clear message to the legalizing movement that we will continue to enforce Federal law and work to prevent their initiatives from passing in other states. We will also continue to consider additional steps including the conditioning of Federal ~~drug control~~ money on compliance with Federal ~~Controlled Substances Act~~ and the National Drug Control Strategy.

- Doctors
- Compassion
- States Rights
- typical enemies

MORNING
OF
27th?

[We have ~~over~~ every intention of enforcing
Federal laws & we plan to educate
people that this is bad policy]



U. S. Department of Justice

Washington, D.C. 20530

FACSIMILE COVER SHEET

TO: RAHM EMANUEL
DENNIS BURKE

FROM: Nicholas M. Gess
Director
Office of Intergovernmental Affairs
TELEPHONE: (202) 514-3465
FACSIMILE: (202) 514-2504

DATE: December 11, 1996

SUBJECT: Lautenberg

PAGES: (Including this cover sheet)

REMARKS: Rahm & Dennis -- Just got a copy of this stuff.
It's our first criminal Lautenberg case. Nick



U.S. Department of Justice

United States Attorney

Press Release

Northern District of Iowa

For further information contact:

STEPHEN J. RAPP

(319) 363-0091

Cedar Rapids, Iowa

FOR IMMEDIATE RELEASE

Date: December 11, 1996

**CEDAR FALLS MAN IS FIRST IN THE NATION
CHARGED UNDER NEW FEDERAL LAW**

CEDAR FALLS, IOWA -- United States Attorney Stephen J. Rapp announced Wednesday that William M. Smith, 20, of Cedar Falls, Iowa, had been charged with possession of a firearm after having been previously convicted of an assault involving domestic violence.

Rapp said that the charge was the first in the nation under a new federal law which took effect on September 30, 1996 which prohibits persons who have been convicted of misdemeanor crimes of domestic violence from acquiring or possessing firearms.

Joining Rapp at a press conference in Cedar Falls were J. Robert Switzer, Special Agent in Charge of the Midwest Region of the Bureau of Alcohol, Tobacco, and Firearms, (BATF), Black Hawk County Attorney Thomas Ferguson, and Cedar Falls Chief of Police Michael Reifsteck, representing the agencies that have been involved in the investigation.

The charge is contained in a complaint filed in U.S. District Court in Cedar Rapids. The complaint alleges that on November 17, 1996, William Smith shot his wife, Lauralee Smith with a .380 pistol that he had purchased at Duce's Pawnshop in Waterloo on November 15, 1996. According to the complaint a medical examination of Ms. Smith indicated that *"the bullet has passed through her chest. She had an entry wound in her back and an exit wound near her left shoulder. The bullet had come close to her heart and her aorta artery. The bullet broke the sixth rib on her left side and punctured her left lung. Ms. Smith survived the shooting and was eventually released from the hospital."* The complaint also alleges that William Smith had assaulted the same victim on September 13, 1994, by pushing her, grabbing her neck and throwing her to the ground, and was convicted for the assault on November 28, 1994.

"This case demonstrates the BATF's commitment to respond promptly to alleged violations of federal firearms laws that are brought to our attention after initial investigations by local law enforcement agencies," said J. Robert Switzer of the BATF.

"We appreciate the cooperation of the federal authorities in the case," said Cedar Falls Police Chief Michael Reifsteck, whose department has led the Smith investigation. "We know from past experience that the cooperation has led to stiffer penalties against dangerous offenders in our community than could have been obtained in state court."

"Our office has filed several state charges against William Smith regarding the purchase of the pistol on November 15 and the shooting incident on November 17. These will now be dismissed to allow the federal prosecution to go forward," said Black Hawk County Attorney Thomas Ferguson. "Having reviewed the state and federal law and the evidence in this case, I believe that it is probable that a more significant punishment can be achieved in federal court."

"The maximum federal sentence in this case is 10 years in prison and a \$250,000 fine," said U.S. Attorney Stephen Rapp. "For the defendant to be found guilty it is only necessary that we prove he possessed the firearm and had the prior conviction. But in setting the actual sentence the Court can take into account the shooting and injury to Lauralee Smith. Whatever sentence is pronounced, it cannot be reduced by parole. By contrast in state court the most likely result would have been conviction for aggravated assault which carries a maximum sentence of two years and is subject to parole."

On November 11, at a conference of the Iowa County Attorneys Association, Rapp announced that his office would place a high priority on enforcement of the new law prohibiting firearms possession by domestic abusers and he urged local prosecutors to refer appropriate cases for federal prosecution.

"Our Iowa experience tells us that this law could be an effective tool to stop the escalation of violence which sometimes follows the first domestic abuse incident," said Rapp. "In the last six years 83 Iowans, including nine children, were murdered in incidents of domestic abuse. Most of the killers used guns. Many, including one whom our office prosecuted, were previously convicted of domestic abuse assault."

The new federal law restricting firearms rights after domestic assault convictions was sponsored by Senator Frank Lautenberg (D-NJ). It was endorsed by President Clinton in August, passed the Senate by a vote of 97-2 on September 12, and was included in the FY97 budget bill which was approved by Congress on September 30.

The U.S. Attorneys office for the Northern District has filed and successfully prosecuted a number of other firsts in the nation cases including the first indictments under Title III of the Brady Bill and the "Three Strikes" provision of the 1994 Crime Bill. Rapp said that the filing of these cases does not mean that Iowa has a more serious crime problem than other states. "It does reflect a "can do" attitude on the part of prosecutors in his office who are in close communication with their local counterparts and want to make effective use of every available tool to make their communities safer.

As in every criminal case a complaint or indictment is only an allegation and a defendant is presumed innocent unless and until proven guilty.

2. The County Attorney has concluded that he cannot prove more than aggravated assault under state law because the victim is somewhat uncooperative and says that she does not believe that her husband intended to fire the weapon. An aggravated assault carries a maximum sentence of two years, but rarely involves more than six months in custody.

3. Under federal law, in order to find the defendant guilty we need only prove the possession and the conviction. At sentencing we will ask the Court to cross-reference to the aggravated assault guideline (2A2.2) and apply an upward adjustment for the discharge of the firearm and the serious bodily injury, and establish an offense level of 24, and a probable criminal history of Category III. Depending on acceptance of responsibility this could mean a sentence of 46-78 months.

4. The defendant's 1994 assault conviction was not entered under the state statute's domestic abuse section. However, counsel was appointed for the defendant though he eventually waived counsel in a signed document. The failure to charge domestic abuse assault is understandable given that the police file contains statements indicating that the defendant and victim were ex-boyfriend and girlfriend. The police may have not been unaware that they had a child in common born in 1993 (on which there is an October 1994 decree of paternity). Given that there was the relationship described in the federal statute and there was an assault conviction, we believe that federal prosecution is consistent with the recent position jointly taken by the Departments of Justice and Treasury and which is incorporated in the "open letter to all state and local law enforcement officials" from BATF Director Magaw.

5. The BATF has reviewed the local investigation and adopted the case. Its Office of Legal Counsel has also reviewed the record and strongly supports federal prosecution.

6. We are charging the case first by complaint. The agent's affidavit in support of the complaint is attached. It is anticipated that the case will be presented to the grand jury on Wednesday together with additional evidence and an additional count under 18 U.S.C. Sec 922(a)(6) regarding material misrepresentations as to age and an unrelated criminal charge made by the defendant on the firearms transaction record.

7. Attachments to be sent by fax - Agent's Affidavit
Draft Press Release

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. fax	re: attachment 1 [partial] (2 pages)	12/11/1996	b(7)(C), b(6)

COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Jose Cerda
OA/Box Number: 16954

FOLDER TITLE:

Lautenberg Gun Bill 1997 [2]

2016-0931-S
rc2292

RESTRICTION CODES

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

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

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

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

RR. Document will be reviewed upon request.

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

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

Attachment 1

STATE OF IOWA)
) as AFFIDAVIT
COUNTY OF LINN)

I, (b)(6), (b)(7)c, first being duly sworn, depose and say
as follows:

1. I am a Special Agent with the United States Treasury
Department, Bureau of Alcohol, Tobacco, and Firearms (ATF). I
have held this position for five and one-half years. I am
currently assigned to the State of Iowa. Prior to my employment
with ATF,

(b)(6), (b)(7)c

(b)(6), (b)(7)c

[001]

2. I am involved in an investigation of firearms
violations by William Maurice Smith, hereafter referred to as
"the defendant." I have reviewed witness statements, police
reports, court records, and other documents relating to this
investigation. My review of these documents forms the basis for
my knowledge of the facts set forth herein.

3. On September 13, 1994, the defendant assaulted Lauralee
Lorenson. The defendant pushed her, grabbed her neck, and threw
her to the ground. At the time of this assault, the defendant
and Ms. Lorenson were not married, but the defendant had a child
by Ms. Lorenson. The defendant was charged with assault under
Iowa law and counsel was appointed to represent him. On November

28, 1994, the defendant was convicted of assault by the Iowa District Court in and for Black Hawk County.

4. Eventually the defendant and Ms. Lorensen resumed their relationship and became married. Upon their marriage, Mrs. Lorensen changed her last name to Smith.

5. During the month of October 1996, the defendant assaulted Ms. Smith by grabbing her throat. The defendant admitted to the police that he assaulted Ms. Smith on this occasion. A complaint has been filed against the defendant for domestic abuse assault, but this charge has not yet been resolved.

6. On November 15, 1996, the defendant purchased a Grendel Model P12 .380 pistol, serial number 24022, at Duee's Pawn Shop in Waterloo, Iowa. This transaction was recorded on an ATF Form 4473, which the defendant signed. Based upon my experience and training, I know that the pistol was manufactured in the State of Florida and would have been transported in interstate commerce to the State of Iowa. There are no licensed manufacturers of firearms in the State of Iowa.

7. Between November 15 and 17, 1996, several witnesses saw the defendant handle this firearm. Laurelee Smith saw the defendant carrying the pistol on several occasions. The defendant's brother, Romondus Cooper, also saw the defendant handle the pistol during this period. David Acklin, the boyfriend of the defendant's mother, said that the defendant showed him the pistol as well.

8. On the evening of November 16, 1996, the defendant went with Lauralee Smith to a bowling alley in Waterloo. While they were at the bowling alley, the defendant displayed the .380 pistol. One of Ms. Smith's friends, Sandy Smith, saw the defendant remove the pistol from his pants at the bowling alley.

9. Later that night, at approximately midnight, the defendant returned with Lauralee Smith to their residence at 2003 Waterloo Road, Apartment B-12, in Cedar Falls, Iowa. They were accompanied by Romondus Cooper and Anne Maria Ohrt, Cooper's girlfriend.

10. The defendant and Lauralee Smith had an argument that night in their apartment. Gabrielle Dewitt, the neighbor in the downstairs apartment, could hear that the defendant and Ms. Smith "were fighting pretty bad because they were either knocking things over or doing something that would cause loud thuds on my ceiling." The defendant has admitted that he and Lauralee Smith were having an argument at this time.

11. At some time between approximately midnight and 2:00 a.m. on November 17, 1996, the defendant shot Ms. Smith in the back with the .380 pistol he had purchased from Duse's Pawn Shop on November 15, 1996. The shooting took place in the bedroom of the apartment at 2003 Waterloo Road. The only people present in the bedroom at this time were the defendant and Ms. Smith. Anne Ohrt, who was in the living room of the apartment, has said that she heard a gunshot at this time. Romondus Cooper was also in the living room, but he said he did not hear a gunshot.

12. The defendant then took Ms. Smith to Sartori Hospital in Cedar Falls. Ms. Smith was treated in the emergency room. The medical examination indicated that the bullet had passed through her chest. She had an entry wound in her back and an exit wound near her left shoulder. The bullet had come close to her heart and her aorta artery. The bullet broke the sixth rib on her left side and punctured her left lung. Because the bullet's path was close to her heart, she was transferred immediately to Allen Hospital in Waterloo for treatment by specialists. Ms. Smith survived the shooting and was eventually released from the hospital.

13. Ms. Smith gave a sworn statement on November 17, 1996. She said that she and the defendant went to their bedroom when they returned home to the apartment shortly after midnight that morning. At this time, she saw the defendant handling the .380 pistol. She went into the bathroom that adjoined the bedroom. As she reentered the bedroom, she heard a noise and felt pain in her back. She could not recall the discussion that she was having with the defendant immediately prior to the shooting. She indicated that the defendant had been violent with her in October 1996.

14. The defendant also gave a statement on November 17, 1996. He initially claimed that Ms. Smith had been shot in a drive-by shooting. He later admitted that he had shot her with the .380 pistol in the bedroom of their apartment. He admitted

that he and Ms. Smith were having an argument that night, but he claimed that the shooting was accidental.

15. On November 17, 1996, police executed a search warrant at the apartment shared by the defendant and Ms. Smith. In the course of this search, police recovered the .380 pistol, serial number 24022, that the defendant had purchased from Duse's Pawn Shop on November 15, 1996. Police also seized a box containing 25 rounds of ammunition. In addition, police found a spent .380 shell casing in the kitchen, another bullet on the bedroom floor, and a third bullet in a safe on the living room floor.

I declare under penalty of perjury that the foregoing is true and correct.

(b)(6), (b)(7)c Special Agent
Federal Bureau of Investigation

SUBSCRIBED AND SWORN to before me by (b)(6), (b)(7)c on this
_____ day of December, 1996.

JOHN A. JARVEY
Chief Magistrate Judge

ROCK BARR
7th District, Georgia

LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
PHONE: (202) 225-2301
FAX: (202) 225-2304

FIREARMS LEGISLATION TASK FORCE
CHAIRMAN



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

January 3, 1997

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EMPLOYMENT, AND HOUSING
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AND MEMORIAL AFFAIRS

The Honorable William J. Clinton
1600 Pennsylvania Avenue, NW
Washington, D.C. 20502

IN RE: Domestic Violence Legislation ("Lautenberg Amendment")

Dear Mr. President:

I would like to express my concern about the dissemination of misinformation by senior members of your staff over the Lautenberg Amendment to the Omnibus Consolidated Appropriations Act of 1997. I would also like to offer my assistance in addressing problems that still remain as a result of the haphazard manner in which this legislation was passed and the improper way in which it is being enforced.

First, the amendment became an issue when the Administration, with the assistance of Senator Lautenberg and others, began to push for an amendment to the Gun Control Act of 1968 to make it unlawful for persons convicted of "crimes of domestic violence" to possess or receive firearms. This idea is sound and important in theory and is one which I also support.

Sadly, the language the Administration endorsed to address this problem suffered from fatal Constitutional flaws. Furthermore, the effort by certain Democrat Members of Congress to circumvent the legislative process by bringing this issue up at the close of the 104th Congress, prevented us from holding the kind of hearings and debate which would have provided a sound basis for a law which would properly address this issue.

After a great deal of effort, I and others in Congress were able to address many of the problems which plagued the legislation in its original form. At any stage during this process, we would have been pleased to hear from the Administration, especially since your Administration continued to take such an active role in the development of the Lautenberg language.

CONGRESSIONAL
435 COLLEGE STREET
SUITE 8, ROOM 205
CONCORD, CA 94521
(708) 825-1770
FAX: (708) 825-2304

LEGISLATION
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ROCK
600 EAST 1ST STREET
ROME, GA 30067
(708) 225-1770
FAX: (708) 225-2304

The Honorable William J. Clinton
January 3, 1997
Page Two

Unfortunately, it seems the desire by Lautenberg proponents to score quick political points before the then-pending election interfered with the ostensible goal of protecting families. This is the only explanation for why the Administration chose not to cooperate in a bi-partisan manner to develop effective legislation that properly addressed the serious problem of domestic violence.

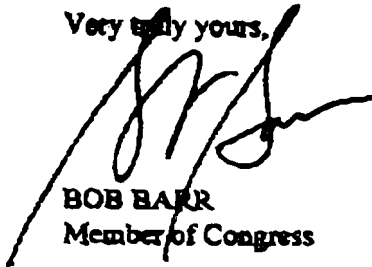
As if the Administration's handling of this issue before its passage was not problematic enough, the Treasury and Justice Departments have now chosen to enforce this law retroactively, contrary to the intent of Congress and contrary to Constitutional guarantees against ex post facto enforcement of criminal laws. It now appears this decision was not made in the few short weeks following enactment of the law, but rather before passage and signing of the legislation. It appears the Administration chose to remain silent on the issue of retroactive enforcement during the debate, in a politically-motivated attempt to drive a wedge between law-enforcement groups and supporters of Second Amendment rights.

If you are seriously interested in putting partisanship aside and addressing the problems the Administration created by forcing this legislation through without input from any interested persons or organizations, such as law enforcement groups, the military, or the court system, I and many of my colleagues will gladly work with you.

In fact, I and others intend to bring this issue up early in the next Congress and hope to have the overt support of the Administration, as we move to amend this law so it can be enforced without damaging our military and law enforcement capabilities or trampling on our Constitutional rights.

I hope we can anticipate the Administration working with us rather than against us in this effort.

Very truly yours,



BOB BARR
Member of Congress



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JULES BERNSTEIN
LINDA UPSETT

DATE: 1/7/98

TO: Clara Robinson

ORGANIZATION: Dennis Burke

FAX NUMBER: _____

FROM: Beth Weaver

NUMBER OF PAGES INCLUDING COVER: _____

COMMENTS: FYI

**If you have any questions regarding this FAX,
please call (202)842-4420.**

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THANK YOU.



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January 2, 1997

U R G E N T

RE: **OMNIBUS CONSOLIDATED APPROPRIATIONS ACT OF 1997 -
IMPACT OF DOMESTIC VIOLENCE CONVICTIONS TO PEACE
OFFICERS**

Dear Bob:

Language that was incorporated into the Omnibus Consolidated Appropriations Act of 1997 provides a ban on the possession of a firearm for individuals convicted of a misdemeanor crime of domestic violence, which seriously impacts law enforcement and military personnel. This law would solely impact careers where carrying a firearm is a condition of employment, which may mean the end of careers for police officers as well as the livelihoods of their families.

As some of you have been, ALADS has been bombarded with media calls of all sorts. I believe media attention in this matter will only hurt our campaign and negatively impact our members. I am avoiding engaging with the media as I believe it will put so much pressure on members of Congress that they will be unable to help us.

I ask, however, that you write to members of Congress indicated on the enclosed sample letters, requesting their strong support in this very urgent matter. For your convenience, I have included sample letters we have sent to congressional members, and their names and addresses. I ask that you send a letter representing your association members as well. Please fax copies of your letters to me at (213) 747-2705.

In addition to contacting congressional members, ALADS has also filed an action in federal court for three of our members that have been impacted by this legislation. We are challenging the federal legislation on the basis that it is unconstitutional and it is in violation of:

1. Article 1, Section 8, Commerce Clause;

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2. The 10th Amendment claiming that the provisions of the Act are reserved to the states respectively;
3. The 14th Amendment to the Constitution based on both equal protection grounds and due process grounds; and,
4. Article 1, Section 9, which prohibits an ex post facto law and a bill of attainder.

I would also like feedback from you on the number of your members that have been adversely impacted by this Act, as well as any legal action taken by your association regarding this matter.

If you have any questions, please don't hesitate to contact me.

Sincerely,



Pete Brodie
President

PB:ka

Enclosures

Gun law draws fire from police

Domestic-abuse record can strip officer of his badge

By Hugh Aynesworth
THE WASHINGTON TIMES

DALLAS — The new federal law that forbids anyone convicted of domestic violence from owning a gun has some police organizations in a bind and has drawn mixed reviews from Texas law enforcement.

The situation was spotlighted here last week, when Dallas Police Chief Ben Click took a weapon away from a 19-year veteran officer and reassigned him to "a non-uniform assignment" at the county jail.

The officer, senior Cpl. Clint Askew, 47, had been charged with beating up his 16-year-old son and threatening other members of his family during a scuffle at his suburban home in DeSoto in June.

"He will remain in his current status pending a formal legal opinion from the City Attorney's Office," said police spokesman Ed Spencer yesterday.

Cpl. Askew could not be reached for comment.

The DeSoto altercation resulted in a Class C misdemeanor charge, and records show that Cpl. Askew was fined \$235 after pleading nolo contendere July 15.

Police officials here and around the country began searching their ranks for officers with domestic abuse records this month after the Bureau of Alcohol, Tobacco and Firearms issued a statement advising that officers are not exempt from the federal law, which went into effect Sept. 30.

In Dallas, more than a dozen officers have had domestic-abuse cases filed against them in recent years, but all eventually were dismissed.

The Dallas police chief has strongly backed the new law and said this week he saw no reason why police officers should be excluded, because "this is the root of so many of our problems."

Chief Click said he would fire any officer ordered to turn in his weapon under the law.

Questions that remain include whether the law should be retroac-

tive and whether a no-contest plea should count as a conviction under the new law.

The Combined Law Enforcement Associations of Texas, which claims 16,200 members, plans to challenge the law, though CLEAT staff attorney Terry Putthoff said last week it had not been determined exactly what methods would be used.

"What if, all of a sudden, lawyers were told that if they had ever been convicted of domestic abuse, they could no longer practice law?" Mr. Putthoff said.

In Fort Worth, a police spokesman said no current officers would be affected by the law.

In Arlington, Police Chief David Kunkle called the law "generally a good one" but said "the mechanics of its application could become problematic."

He said he knows of no Arlington officers affected.

CLEAT spokesman Charles Barrett said Texas officers convicted of more serious misdemeanors of ten are suspended.

The Washington Post

Witness Relocation

DATE: 12-23-96

PAGE: A-13

Misrepresented, Report Says

Despite Official's Claim, Puerto Rico Dumping

Criminals on U.S. Cities, Newspapers Assert

Reuter

ORLANDO, Dec. 22—The head of a Puerto Rican witness relocation program misled Congress when he said the island was not dumping killers and drug dealers on U.S. cities, two newspapers said today.

When Miguel Gierbolini told a House panel on crime last month that no dangerous criminals were sent to Florida, a drug dealer protected by the program was sitting five rows behind him, the Orlando Sentinel and the San Juan Star of Puerto Rico said.

The newspapers, which jointly investigated the issue, said Gierbolini seriously misrepresented the number of

witnesses sent to Florida and the severity of their crimes.

They identified major criminals from weapons traffickers to murderers who had been relocated to mainland cities. In virtually every case, local law enforcement was never told.

Gierbolini told the Star he was unaware of witnesses with criminal backgrounds who were given immunity and relocated to the mainland. "I do not think I have been deceptive," he said.

The program spends millions of dollars a year protecting criminals who have been granted immunity in return for their testimony in Puerto Rico's fight against drug violence, which claims 800 lives a year on the island.

A Puerto Rican attorney, Ricardo Izurieta, said he had seen a 10-year parade of criminals moving to the mainland after helping to convict their associates.

"When these guys go over there without any supervision, they are going to keep robbing and killing and selling drugs," he said. "There's nothing else they can do. They have no profession. They have not learned anything to make a buck legally."

Unlike the federal witness program, the Puerto Rican program does not monitor the activity of the criminals it relocates with any regularity. Nor does it have accurate records of the number of witnesses in the program.

Orlando has been a favorite destination of drug criminals in the program. In recent years, the popular tourist city has also become the receiving end of a heroin pipeline that begins in Puerto Rico. Forty-five heroin-related deaths have been recorded since the boom began in 1995.

Former Puerto Rican justice secretary Hector Rivera Cruz, who helped establish the program, acknowledged hard-core criminals made up the bulk of its witnesses.

"In the beginning, the majority were people with no criminal record," he told the Sentinel. "But after the first year it started to have people with a record."