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001. fax	Elizabeth Hyman to Dennis Burke [partial] (1 page)	08/23/1996	b(7)(C), b(6)

COLLECTION:

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

FOLDER TITLE:

Lautenberg Gun Bill 1997: (Brady) [1]

2016-0931-S

rc2293

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]

Disarming Those Who Need Guns Most

By JAMES BOVARD

"Rank and file police officers have never had a better friend in the White House than Bill Clinton," announced national Fraternal Order of Police President Gil Gallegos when his group endorsed the president on Sept. 15. A few weeks later, Mr. Clinton signed a new gun-control act that is wreaking havoc on America's police and also decimates the constitutional rights of millions of other Americans.

Most police organizations have enthusiastically supported every gun-control gambit Mr. Clinton has put forward. That may be because such legislation almost always contained an exemption for the policemen themselves while they were on duty. No more. On Sept. 28, as part of a massive appropriations bill, Congress passed the Lautenberg Act, which may greatly increase the number of Americans prohibited by federal law from owning firearms. For the first time, thanks to an amendment by Rep. Bob Barr (R., Ga.), law enforcement officials are not exempt from the nation's gun control laws.

Long Sentences

The Lautenberg Act prohibits from owning a gun or possessing any ammunition anyone who has ever been convicted of a misdemeanor involving the use or attempted use of physical force, or the threatened use of a deadly weapon against a spouse, child, intimate partner or other cohabitant. (People with any felony conviction have been prohibited from owning guns since 1968.) Any person with such a misdemeanor on his record who is found in possession of a gun, or even of a single bullet, can face a \$250,000 fine and 10 years in prison—longer than the average convicted murderer serves in this country.

Gerald Arenberg, executive director of the National Association of Chiefs of Police, observed that the act "has thrown the whole world into confusion for cops." A recent survey by the Fraternal Order of Police found that 82% of its members believed that domestic violence is a problem for police families, but only 27% believed that police officers would answer questions about such violence. Victor Kappeler, director of the Criminal Justice Graduate Program at Eastern Kentucky University, estimated that if accurate reporting of such police do-

mestic violence occurred, and if all such assaults were fully prosecuted, 10% of the nation's law enforcement officials (70,000 individuals) could be found guilty and thus banned from possessing a firearm under the new law. This is far more police than Mr. Clinton has actually managed to put on the street with his vaunted "100,000 new cops" program.

In Columbus, Ohio, five police officers have been stripped of their duties and weapons under this legislation. Similarly, in Minneapolis, six police officers—including the supervisor of the homicide team—

rests (from domestic violence) are based on such things as shoves—rather than knock-down punches or chairs broken over people's heads.

The new law could provide vigilante prosecutors the power to seize the guns of parents who are not following Dr. Spock's child-rearing recommendations. According to Chris Klicka, director of the National Center for Home Education, "There is a move across the country by child rights groups to outlaw corporal punishment. In a few instances, families have been found guilty of abusing their children

Even though they may need guns more than men, women are increasingly likely to be stripped of the means of self-defense by the gun law's provisions.

are on paid leave pending results of an investigation by the police department. The National Association of Police Organizations is calling for Congress to amend the law to exempt police. Beth Weaver, a spokesman for the group, complained last week: "What we are concerned about is that law enforcement officers are the only group of workers in the country who stand to lose their jobs because of this new regulation." Perhaps the police need to be exempt from the law in order to have sufficient personnel to take away other people's guns.

With the Lautenberg Act, Congress has cast a far wider anti-gun net than most Americans realize. State laws on "domestic violence" are totally inconsistent; some states even define "trespassing" as an act of domestic violence. Early in the administration, Hillary Clinton was widely rumored to have thrown a lamp at her husband; if she did, she is guilty of domestic violence, and thus could be forever prohibited from owning an Uzi. In some states, a husband who mimicked Jackie Gleason and shook his fist in the air towards his wife snarling, "One of these days, Alice!" could be permanently stripped of his right to own firearms. University of Maryland Prof. Lawrence Sherman noted, "When you touch people for the purpose of inflicting pain or fear of pain—many states will define that in their case law as an assault. Many of the ar-

as a result of spanking—not that their children were hurt or anything."

Bogus charges of domestic violence are routinely used as tactics in divorce proceedings, and many people who plea-bargained 20 years ago on such a charge and paid a small court fine (instead of spending \$5,000 in legal fees to defend themselves) will be surprised to discover that they have lost one of their constitutional rights. "Many domestic violence charges are false—perhaps as many as one-third where child custody or divorce issues are involved," says Peter Proctor, a forensic expert in Houston.

Sen. Frank Lautenberg (D., N.J.) described his bill on the Senate floor on Aug. 2: "My amendment stands for the simple proposition that if you beat your wife . . . you should not have a gun." But women are not exempt from the new law, and even though they may need guns more than physically stronger men, they are increasingly likely to be stripped of the means of self-defense by its provisions. Many localities now require police to make arrests when answering domestic violence calls, and some Virginia counties have seen a tripling of domestic abuse charges against women in recent years.

Disarming women can have deadly consequences. Polly Pryzhyl, a Cheektowaga, N.Y., woman, was murdered by her husband in August 1994 after police took away

The Grand Jury and Dr. Anigbo

THE D.C. grand jury indictment of Marcus Garvey Public Charter School principal Mary A. T. Anigbo and three of her staff on misdemeanor assault charges has sparked an emotional reaction among her supporters, who wish to make the proceedings out to be a racial attack. Their accusation is incendiary and divisive. But is it supported by the facts?

Among the indictments handed up by the grand jury were charges that Dr. Anigbo and two school staff members assaulted a Washington Times reporter. One of the staff members was charged with taking the reporter's notebook. A third staff member was charged with assaulting one police officer. The principal was also charged with assaulting two District police officers who went to the school with the reporter and a Times photographer after the reporter lodged a complaint with the police. The Washington Times reporter, Susan Ferrechio, is white, and Dr. Anigbo is African American.

In light of the inflammatory nature of the charge leveled by Dr. Anigbo's backers, let's look at the forces supposedly conspiring against her. The grand jurors, who heard testimony in the case and who handed up the indictments, were reportedly predominantly black. Moreover, the police officers involved in the altercation at the school were African American. So is U.S. Attorney Eric H. Holder Jr.

Dr. Anigbo's supporters contend that the case

was hardly a criminal matter. In recognition of the emotional level of the debate, Mr. Holder deliberately sought a grand jury review of the matter rather than making the call himself to ensure that a cross section of the community would be consulted. How those facts can get transformed into "vintage white racism," as one of Dr. Anigbo's supporters has charged, is hard to fathom.

It also has been suggested that presenting the matter to a grand jury for a misdemeanor indictment is somehow unique. The facts, again, seem to speak otherwise. So far in 1996, 95 other simple assault cases have been charged by indictment rather than by the prosecutor's filing charges himself. Neither is the simple assault misdemeanor a rarely rendered charge. At last count, there were 2,464 simple assault cases pending in Superior Court.

None of this means that Dr. Anigbo and the other three Marcus Garvey Charter School staff members are guilty of anything. Their innocence must be presumed. And they will have their day in court. Meanwhile, a city that has had more than its share of unnecessary, debilitating racial flare-ups, should cool it. As Mr. Holder said in his statement, "People who would seek to use this matter for their own negative purposes must be ignored, and people of good faith must step forward and ensure that this matter does not become a divisive issue in our city."

her guns. A few days earlier, she had separated from her husband and taken her children with her to her mother's house.

-- Her husband came to her mother's house and threatened her; she brandished a pistol to force her husband to back off. Police arrived and seized her gun. A week later, she and her mother went to her husband's house to pick up clothing for the children; her husband stepped out of the house and gunned them both down.

What Epidemic?

The presumption behind the Lautenberg law is that men must be disarmed in order to reduce an epidemic of wife killing. However, according to FBI statistics, the rate of women killed by husbands or boyfriends since the mid-1970s has fallen almost 20%. It's true that some jurisdictions have been criminally negligent in prosecuting and incarcerating people (almost entirely men) who repeatedly use severe physical force against their spouses. The solution is to jail the bad guys, not wave a legislative magic wand and presume that everyone with a misdemeanor is

a time bomb, just waiting to empty his six-shooter into his spouse.



Frank Lautenberg

Congress held no hearings on the Lautenberg Act before it was enacted and most congressmen will likely be surprised at the police backlash against the law. Prof. Sherman, of the University of Maryland, estimated that 100,000 to 150,000 Americans are convicted of domestic violence each year. Thanks to the Lautenberg Act, there are probably at least one million new felons in this nation—people with misdemeanor convictions who retain their firearms because they are unaware of their duty to disarm themselves.

The act should be repealed, and local prosecutors should stop letting real wife-beaters dance away with a slap on the wrist.

Mr. Bovard is the author of "Lost Rights: The Destruction of American Liberty" (St. Martin's, 1994).



Crash Investigators Keep Pursuing Answers, Down New Paths and Old

Testing a Theory Of Elusive Sparks With Little Trace

By MATTHEW PURDY
and ANDREW C. REVKIN

As aviation investigators pursue their theory that a static spark ignited the explosion that destroyed Trans World Airlines Flight 800, they are taking their inquiry into fresh and difficult investigative terrain. Static electricity has never been blamed for an in-flight explosion or a crash of a commercial airliner, and when these sparks do occur, they rarely leave any trace to prove they were even there.

The theory gained prominence last weekend, when National Transportation Safety Board officials said a static spark had become the leading focus of their investigation, while acknowledging that they had no evidence to support it.

The safety board's assertion caused visible displeasure between the board's leaders and criminal investigators, who have widely discussed their search for evidence that the plane was sabotaged. On Tuesday, in fact, the White House stepped into the dispute and made an effort to coordinate communication between the two agencies and to stop public bickering about the investigation into the July 17 crash of the Paris-bound Boeing 747.

"We want to make sure that we speak with one voice," said a White House official who monitors the investigation.

Even so, the attraction of a static spark as a theory is clear. However improbable, it could explain the persistent lack of evidence of a cause for the explosion. Static charges are often cited as the triggering event in fuel explosions when they cannot otherwise be explained.

"It's a default situation," said Joseph Leonard, a retired chemist with the Naval Research Laboratory who heads a committee of petroleum and engineering industry representatives studying dangers posed by static electricity. "If you can't find another ignition source, it must be static. That's the way people look at it."

Static is a well-recognized danger in fuel tanks and has caused numerous explosions in automobile, boat and aircraft tanks — but almost always when they are being filled and a stream of fuel creates a static field.

A static charge is created by the friction of two dissimilar materials rubbing together, which is why a static field is generated by a balloon being rubbed in one's hair — and why a person gets a small static shock when touching a doorknob after walking across a carpeted floor.

This kind of charge can create a risk of fire. "Every time you drive to a gas station, gasoline vapor and air mix and create a flammable region," said C. James Dahn, an expert on static electricity at Safety Consulting Engineers in Schaumburg, Ill. "And there's enough electrostatic energy in human bodies to ignite the gas-vapor mixture."

But at gas stations, plastic hoses, rubber tires and other conditions almost always prevent sparks from igniting fires, he said.

For a static spark to have caused the explosion on Flight 800, the experts say, it would require an improbable confluence of circumstances — including the proper fuel-air mixture, a static charge and some material to accumulate the energy and then release it across a small gap in the form of an electrical arc.

"You have to have everything come together just wrong," said Cyrus P. Henry, a research chemist with Octel America, a company that makes an anti-static additive for fuels.

These factors have come together in the past in ways that have destroyed aircraft. In separate incidents, wing tanks in two Boeing 727's caught fire on the ground at Minneapolis-St. Paul Airport in 1970 and 1971, according to the Federal Aviation Administration. Investigations

found that a certain kind of plastic filter used in fuel lines at the airport built up a charge that was transferred to the fuel.

Some helicopters have caught fire from static charges created as fuel trickled back into tanks through vent tubes, said a senior F.A.A. engineer specializing in fuel systems. Like most F.A.A. employees, he said he could speak only on condition of anonymity concerning work even remotely related to the crash. All of these incidents occurred with the aircraft on the ground.

Static can also be created in a plane after a lightning strike, and this kind of charge was thought possibly to be involved in the 1976 explosion of a Boeing 747 owned by the Iranian Air Force. Safety board investigators are re-examining their work on that crash to see what might be germane to the current investigation.

Many measures are taken now to prevent static-caused fires or explosions on airplanes, either when they are being fueled or while they are flying, according to several safety engineers at the F.A.A. In flight, planes build up an external charge on their aluminum skin, but that is dissipated through small wands on the wings. And when a static charge builds on a metal surface, generally it stays there. It does not migrate into the interior of the aircraft, where it might threaten to ignite fuel vapors, according to several aviation engineers.

To guard against static accumulation in fuel tanks on airplanes, fueling trucks are linked to the plane, and the plane to the ground, by wires to insure that any charge is dissipated. And to guard against a dangerous buildup of an electrical charge during flight — when the mere movement of the aircraft through the air can cause static — planes are designed so that all pieces that conduct electricity are tied together, or bonded, to prevent a spark.



NATIONAL ASSOCIATION OF POLICE ORGANIZATIONS, INC.

Representing America's Finest

750 First Street, N.E., Suite 920 • Washington, D.C. 20002-4241

(202) 842-4420 • (800) 322-NAPO • (202) 842-4396 FAX

President

THOMAS J. SCOTTO
*President, Detectives'
Endowment Association
of New York City
New York, NY*

Executive Vice President
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*President, Palm Beach County
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Ohio PBA
Berea, OH*

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

FOR IMMEDIATE RELEASE:

January 9, 1997

CONTACT:

Beth Weaver (202) 842-4420

Executive Director

ROBERT T. SCULLY

General Counsel

WILLIAM J. JOHNSON

Legislative Consultants

JULES BERNSTEIN
LINDA LIPSETT

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

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

"The Stupak amendment will restore the original intent of the Lautenberg, domestic violence legislation," stated Bob Scully, Executive Director of the 185,000-member organization. "Firearms are a tool of the trade for cops and the current law will destroy law enforcement careers unless it is amended."

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

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

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

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

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

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

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



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

08-Jan-1997 06:54pm

TO: Dennis Burke

FROM: Leanne A. Shimabukuro
 Domestic Policy Council

SUBJECT: GOP BILL WOULD BAR RETROACTIVE ENFORCEMENT OF DOMESTIC ...

Date: 01/08/97 Time: 17:56

GGOP bill would bar retroactive enforcement of domestic abuse gun

WASHINGTON (AP) House Republicans are pushing legislation to keep the Clinton administration from retroactively enforcing a law enacted last year to ban gun possession by anyone convicted of a crime involving domestic violence.

Rep. Bob Barr, R-Ga., a former federal prosecutor and the GOP point man in last year's negotiations, introduced a bill Tuesday to exempt from the gun ban anyone whose domestic violence conviction occurred before the law was enacted Sept. 30.

``It's a question of basic fairness,'' Barr said Wednesday, arguing that retroactive enforcement would violate both the intent of Congress and the Constitution.

But Sen. Frank Lautenberg, D-N.J., the principal sponsor of the new law, said negotiators always intended that the law would be applied retroactively. And he said nonpartisan congressional legal experts have concluded the law would withstand a constitutional challenge.

``It is outrageous to propose that every currently-convicted wife beater and child abuser be allowed to have a gun,'' said Lautenberg. ``The lives of thousands of battered women and abused children are at stake.''

Police groups have objected to the law because any officer with a domestic violence conviction now is barred from possessing a gun. They also have complained that it's nearly impossible to enforce.

The Bureau of Alcohol, Tobacco and Firearms advised all law enforcement agencies late last year that the new law bars any officer with a domestic violence conviction from possessing a gun.

James O. Pasco Jr., executive director of the Fraternal Order of Police, estimated Wednesday that several hundred officers across the country already have been taken off regular beats since passage of the law. The group has endorsed Barr's bill.

Barr said the House judiciary crime subcommittee on which he serves will hold hearings on his bill and will consider what limits, if any, should be imposed on gun possession by police and military personnel with domestic violence convictions.

APNP-01-08-97 1801EST



U. S. Department of Justice

Washington, D.C. 20530

FAX NOTE

TO: DENNIS BURKE

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

SUBJECT: LA County Lautenberg lawsuit

PAGES: (including this page)

MESSAGE: DENNIS -- Attached is a copy of the law suit filed by the 3 LA County Deputy Sheriffs. Very wierd.

→ Tom Robert

JS\PC1226.LAK
GREEN & SHINEE, A.P.C.
RICHARD A. SHINEE
BAR NO. 62767
Attorneys at Law
16055 Ventura Blvd., #1000
Encino, CA 91436

(818) 986-2440

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

96 DEC 26 PM 3:37

CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES

FILED

ASSOCIATION FOR LOS ANGELES
DEPUTY SHERIFFS ("ALADS"); DOE
1; DOE 2; DOE 3.

Plaintiffs,

v.

SHERMAN BLOCK, Sheriff of the
Los Angeles County Sheriff's
Department; LOS ANGELES COUNTY
SHERIFF'S DEPARTMENT; COUNTY
OF LOS ANGELES.

Defendants.

96 - 9054 HLH (CWx)

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]

INTRODUCTION

Plaintiffs Doe 1, Doe 2 and Doe 3 (who are each
citizens of the United States), together with the Association for
Los Angeles Deputy Sheriffs ("ALADS"), the Union representative
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. 55921(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

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

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

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

14. At all times herein mentioned, subsequent to the passage of the Omnibus Consolidated Appropriations Act of 1997, amending the Gun Control Act of 1968 (18 U.S.C. §§921(a), 922(d) and 922(g)), the Bureau of Alcohol, Tobacco and Firearms issued 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.

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

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

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

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

FIFTH CAUSE OF ACTION

(Injunctive and Equitable Relief)

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

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

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

34. At all times herein mentioned, Petitioners Doe 1, Doe 2, Doe 3 and Plaintiff ALADS have no plain, speedy or adequate remedy in the ordinary course of law, other than the 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 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

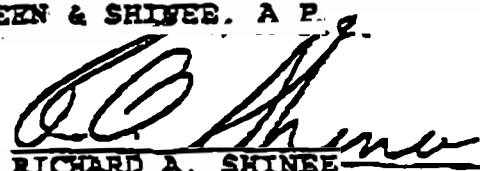
14 5. Awarding such other further relief as this Court
15 may deem appropriate and justified.

16
17 DATED: December 26, 1996

Respectfully submitted,

GREEN & SHINEE, A P.

18
19
20 By:


RICHARD A. SHINEE
Attorneys for Plaintiffs

COMMITTEE:
APPROPRIATIONS
BUDGET
ENVIRONMENT AND PUBLIC WORKS
SMALL BUSINESS
HELSINKI COMMISSION

United States Senate
WASHINGTON, DC 20510-3002
FAX TRANSMISSION

FAX:

To: Dennis Burke
Date: January 8, 1997
Fax #: 456-7028
Pages: 2, including this cover sheet.
From: Bruce King, Sen. Lautenberg
224-9712
Subject: Statement on Barr legislation re: domestic violence gun ban

COMMENTS:

This is what we are putting out in response to Barr's press conference today. Any chance you might want to release something similar?



REPLY TO:

☐ 505 HART SENATE OFFICE BUILDING
WASHINGTON, DC 20510-3002
(202) 224-4744
Internet: frank.lautenberg@lautenberg.senate.gov

☐ ONE NEWARK CENTER 14TH FLOOR
NEWARK, NJ 07102-5257
(201) 645-3030

☐ BARRINGTON COMMONS
208 WHITE HORSE PIKE
SUITES 18-19
BARRINGTON, NJ 08007-1322
(609) 757-8363

Law's Omission Disarms Some Police

Domestic Violence Act Has Some Officers Hanging Up Their Guns

By Roberto Suro and Philip P. Pan
Washington Post Staff Writers

A new federal gun control law is forcing law enforcement agencies around the country to search for officers who may lose their right to carry firearms because they have committed domestic violence offenses.

The nation's basic gun control law, on the books since 1968, has always included an exception for weapons used by government personnel in their official duties, but congressional Republicans removed that exception when they rushed enactment of the domestic violence measure as the last Congress was about to go out of session in September.

The Clinton administration and the Republicans who engineered the final version of the bill are wrangling over who should take responsibility for fixing it when the new Congress takes office next month. In the meantime, law enforcement chiefs from the smallest constabulary to the FBI are struggling with the possibility that an unknown, but potentially significant number of officers, may not be able to fulfill essential duties.

The new law prohibits the possession of a firearm by anyone with a misdemeanor domestic violence conviction on the record. That typically means that the person was found guilty of using, or attempting to use physical force on an intimate, such as a spouse or a child.

Because the official-use exception was taken out of the law in its final form, state and local law enforcement agencies around the country were advised by the Bureau of Alcohol, Tobacco and Firearms last month that any personnel who had committed such an offense should be disarmed immediately.

"I'm sure there are police agencies here with people who have had domestic quarrels, and they're going to run into a serious problem with this," said 1st Sgt. Bernie Shaw, who heads the Maryland State Police firearms licensing unit.

There are, however, no reliable estimates of how many law enforcement officers may be affected locally or nationally.

In Minneapolis, Police Chief Robert K. Olson issued a special order requiring officers to come forward if they were covered by the new law, which went into effect Sept. 30. So far, of nearly 900 sworn personnel, five officers have reported to the department's internal affairs office. They were required to turn over their guns and were put on administrative leave, according to department spokesperson Penny Parish.

Scattered news reports from around the country indicate that perhaps another dozen officers have been removed from active duty under similar circumstances, but most police departments are taking a more deliberative approach and are counting on a modification of the law.

"The LAPD intends to comply with the law, but with a department this big—9,000 sworn personnel—it is going to require a very substantial research project," said Commander Tim McBride, spokesperson for the Los Angeles Police Department. "We are going to hand-check every individual file. In the meantime we are expecting that Washington will take some kind of action to mitigate the potential impact."

Police in the District and Northern Virginia said they were still reviewing the new legislation. Montgomery County police and Maryland State Police have started going through their personnel records. In Prince George's County, police said they completed their review last month, and that all their officers came up clean.

In Baltimore, police are examining personnel records and asking all offi-

cers to declare in writing if they've ever been convicted of domestic violence. The Department of Justice has taken the same approach with the FBI and the other agencies under its jurisdiction that have armed personnel. For those personnel, lying on their disclosure form would be a federal crime.

Perhaps, the most complicated issues involve the 1.2 million people who serve in the armed forces. The Pentagon and the Justice Department are discussing how the law would affect military personnel. The Defense Department is waiting to issue new regulations "until we figure out how strictly they will interpret the law," said Maj. Monica Aloisio, a Pentagon spokeswoman.

For example, pilots with the domestic violence offenses on their records could no longer fly most aircraft under a strict interpretation of the law because their survival kits include a handgun.

But, the most forceful impact would be felt in small police departments that cannot afford to take even a few officers off the street and assign them to desk jobs that never require use of a handgun.

"I can see at some smaller departments, it's going to work quite a hardship, if they've got people in that status," said Fairfax Commonwealth's Attorney Robert F. Horan Jr. Local government officials around the country have predicted that police officers who can no longer carry guns under the new law will probably lose their jobs.

"I don't condone domestic violence," said Ron Robertson, head of the D.C. police union. "But a policeman, if he can't carry a gun, gets fired. That's the end of his job, his career."

Advocates for victims of domestic abuse said they find the complaints coming from police officers a bit mind-boggling.

"They're saying, in so many words, that this is not a crime," said Joan Meier, director of the Domestic Violence Advocacy Project at George Washington University Law School. "People die because of domestic violence all the time. And anyone convicted of the crime has a much longer history than just one incident, and it would have to be a fairly significant incident to be brought to trial."

"They should not have a gun because they're a danger to the public. I think it's common sense, and I

Cont'd

think police officers should be subject to the same laws as the rest of us," she said.

Few D.C. officers will be affected, Meier said, because only a small percentage of offending officers are ever charged, and "an even tinier percentage get convicted." If officers are slow to arrest civilians for domestic violence, they are even less likely to arrest each other, she said.

"It's very hard to prosecute cops. You need cops as your witnesses, and cops protect each other. Police officers don't take reports on other police officers," she said.

The question of how the measure might affect police officers and other government employees never came up last year when the domestic violence provision was first proposed by Sen. Frank R. Lautenberg (D-N.J.), was endorsed by President Clinton and was then adopted by the Senate, 97-2.

All through that process, the Lautenberg amendment simply added a domestic violence misdemeanor to the list of conditions that prevent someone from lawfully possessing a firearm. Others already in the law include conviction for a crime carrying a prison sentence of more than a year, being an illegal immigrant and having a dishonorable discharge from the armed forces. All of these prohibitions, and the domestic violence provision as it was originally proposed, were covered by a blanket exception for government employ-

ees at all levels who use firearms in their official duties.

Just days before Congress was to recess, the gun control measure was added to a key appropriations bill that had to be enacted to prevent a government shutdown. Rep. Robert L. Barr Jr. (R-Ga.), a prominent opponent of gun control measures, led a last-ditch effort to modify the Lautenberg amendment in ways that would have greatly weakened it, Lautenberg said. One proposal, for example, dropped language specifically covering child abusers.

Most of Barr's efforts were thwarted, but in the hours just before the big appropriations bill was finally passed he and his allies did work some changes including the one that removed the official-use exception on this one aspect of the gun control law.

Barr now says he cannot recall who proposed lifting the exception. "In those final hours people were feeding us various changes and I can't remember where that one came from except that it didn't seem to make sense to have a sweeping exception for all these government personnel if this thing was so important," he said.

A leading Democratic strategist said, "they were threatening to hold up the whole show on this and we had to swallow it or risk seeing the whole appropriation's bill crash. Now it looks like it was intended to undermine the bill all along."

The Clinton administration insists that Barr must now fix the problem. "We are enforcing the law as it is written," said Rahm Emanuel, senior adviser to the president. "The provision affecting the official use excep-

tion was not in the original Lautenberg legislation, which we endorsed."

Barr said that the only way to fix the law is to make it apply just to future offenses, so that anyone, government official or not, who had committed a domestic violence crime in the past could legally possess a firearm. That proposal was fought and defeated by proponents of the legislation when Barr offered it last September, and they have vowed to fight it again when the new Congress is assembled in January.

Staff writers Dana Priest, Bill Miller and John Fountain contributed to this report.



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

16 December 1996

The Honorable Bob Barr
United States House of Representatives
Washington, DC 20515

Dear Congressman Barr,

Thank you for participating in the conference call this past Saturday with me and the Executive Board of the Fraternal Order of Police. We share your concerns regarding the new domestic violence legislation and its enforcement and, and we were grateful for the opportunity to express those concerns directly to you. I believe this is a positive first step in working toward a legislative remedy to ensure that this new law has the intended effect.

The Executive Board also met on Saturday with Administration officials, Attorney General Janet Reno and Bradley Buckles, Deputy Director of the Bureau of Alcohol, Tobacco, and Firearms, to discuss this very same issue. We had a very positive exchange with them, and I believe that the F.O.P. can act as an intermediary with the Administration and your office to correct the deleterious effects of the new legislation. Through your good offices, and with the help of the agencies that are responsible for the law's enforcement, I am confident that we can devise a satisfactory solution.

As we agreed, Jim Pasco, our Executive Director, will work with Carter Cornick of your staff on this issue and we look forward to reaching a mutually acceptable legislative remedy very quickly. Again, I appreciate very much your taking the time out to discuss the issue with me and the Fraternal Order of Police. I hope that we can continue this cooperation on this and other issues in the future.

Sincerely,

Gilbert G. Gallegos
National President



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

December 24, 1996

Robert L. Bartley
Wall Street Journal
200 Liberty Street
New York, New York 10281
Attention: Letters to the Editor

Dear Mr. Bartley:

There are two things that the National Fraternal Order of Police (FOP) would like Mr. James Bovard to know in reference to his article, *Disarming Those Who Need Guns Most*, (Wall Street Journal, December 23, 1996). First, Mr. Bovard should be informed that the National FOP opposed the Lautenberg Act from its inception, well before Rep. Bob Barr's (R., Ga.) amendment that did away with exemptions under the law for law enforcement and the military. We did so because we believed it to be unconstitutionally vague. Now, as we consider the statute without such an exemption, we continue to have reservations about the constitutionality of this measure and are further concerned that police officers may be penalized to a far greater degree than the general populace. This fact is curiously missing from Mr. Bovard's treatment of law enforcement's position under the Lautenberg Act. Second, if Mr. Bovard is going to use statistics concerning research generated by the FOP, he should check with us first so that he can use the numbers correctly and not misinterpret them as a means to his literary and political ends.

The National FOP continues to work with the Clinton administration, Rep. Bob Barr, and others to craft a legislative remedy for the deficiencies of the Lautenberg Act. Mr. Bovard got one thing right. The issues concerning the impact of the Lautenberg Act are complex. It will take more than simply spouting-off to provide the necessary solution. The FOP, as the non-partisan representative of more than 277,000 law enforcement officers, has been working toward that solution while Mr. Bovard has been spouting-off.

Sincerely,

Gilbert G. Gallegos
National President



NATIONAL ASSOCIATION OF POLICE ORGANIZATIONS, INC.

Representing America's Finest

750 First Street, N.E., Suite 920 • Washington, D.C. 20002-4241

(202) 842-4420 • (800) 322-NAPO • (202) 842-4396 FAX

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Endowment Association
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THE BARR AMENDMENT TO THE LAUTENBERG BILL *UNFAIR TO LAW ENFORCEMENT*

HISTORY

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

Neither bill had a hearing or any committee action. NAP0 monitored the Lautenberg/Torricelli legislation, but took no position because with its official use exemption, the bill would not adversely impact law enforcement.

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

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

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

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

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

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

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

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

NAPO ACTION

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

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

① Legislative Action

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

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

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

② Legal Action

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

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

12/20/96

SC

JUSTICE

One Strike and You're Out

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

BY LARRY REIBSTEIN
AND JOHN ENGEN

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

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

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

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

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

Many law-enforcement agencies general-

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

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



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

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

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

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

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

With BRAD STONE in Chicago

THE WHITE HOUSE

WASHINGTON

TO: RAHM EMANUEL
FROM: DAVID FEIN ^{DF}
RE: BARR'S ALTERNATIVE LANGUAGE TO LAUTENBERG
DATE: SEPTEMBER 25, 1996

The alternative language to the Lautenberg amendment, apparently proposed by Rep. Barr, would essentially gut the domestic violence gun ban. I am attaching a copy of the alternative language, and have highlighted its shortcomings below.

- **Barr's** alternative would allow persons convicted of child abuse misdemeanors to own and possess firearms. The **Lautenberg** bill would make it illegal.
- **Barr's** alternative would allow persons convicted of domestic violence misdemeanors to own and possess firearms if they were not tried by a jury or waived a jury trial. The **Lautenberg** bill would make it illegal for persons convicted of any domestic violence crime, including all misdemeanors, to own or possess a firearm. (Many misdemeanors do not carry a right to a jury trial.)
- **Barr's** alternative would give persons convicted of a domestic violence crime a loophole by exempting them from this law if they were not notified of the federal firearm ban at the time they were charged with their domestic violence offense. **Lautenberg** creates no such loophole.
- **Barr's** alternative would amend existing law to apply this provision to law enforcement by potentially banning police officers from carrying firearms while on duty. **Lautenberg** would not alter the current exception for law enforcement.

12/08/96 FRI 11:31 FAX 202 514 7864



U. S. Department of Justice

Washington, D.C. 20530

FACSIMILE COVER SHEET

TO: Intergovernmental Affairs
Marcia Hale
John Emerson
John Hart
Alison Bracewell

Public Liaison
Alexis Herman
Christa Robinson

Rahm Emanuel
Dennis Burke

FROM: Nicholas M. Gess
Director
Public Liaison and Intergovernmental Affairs
TELEPHONE: (202) 514-3465
FACSIMILE: (202) 514-2504

DATE:

SUBJECT: see attached

PAGES: (Including this cover sheet)

REMARKS: see attached



U.S. Department of Justice
Office of Intergovernmental Affairs

Director

Washington, D.C. 20530

December 6, 1996

MEMORANDUM FOR: All Interested Law Enforcement Groups

FROM: Nicholas M. Getts
Director
Office of Intergovernmental Affairs

SUBJECT: Identifying Law Enforcement Agents Who Have
Misdemeanor Convictions for Domestic Violence

There has been a recent change in the law pertaining to possession of firearms or ammunition. On September 30, 1996, Title 18, United States Code, Section 922(g)(9) took effect, making it illegal for anyone who has been convicted of a misdemeanor crime of domestic violence to possess any firearm or ammunition. This provision applies to persons at any time prior to or after the passage of the September 30, 1996, law. Moreover, there is no exemption for law enforcement officers and agents.

The Department of Justice established a working group, led by the Office of Investigative Agency Policies (OIAP), to consider the implications of this new law and to recommend a means to assure that Department of Justice employees authorized to possess government-issued firearms and ammunition who may be disqualified from firearms possession by virtue of this new law, are identified.

The Department of Justice is today directing the heads of Department of Justice components which employ individuals who are authorized to possess government-issued firearms and ammunition to implement certain procedures. These procedures and the forms associated with them are not binding on other law enforcement agencies. How other agencies comply with this new law is a matter within their discretion. However, these procedures and the forms associated with them are the product of a great deal of considered and deliberate work and legal analysis. Law enforcement therefore may find these procedures and forms useful.

Please also note that in the case of state, county and local law enforcement officers who are deputized by one or more Department of Justice law enforcement agencies, the Department of Justice will ask the chief officer of the state, county or local agency to certify the deputized officer's continued eligibility to possess firearms and ammunition.

To that end, we enclose the following materials:

- Form memorandum from agency head to employee;
- Form qualification inquiry to be completed by employee;
- Relevant statutory provisions;
- Model letter to state and local agencies regarding Federally-deputized officers;
- Copy of ATF guidance.

We hope that these materials are of assistance to you and invite you to use them as you deem appropriate. ATF has criminal enforcement responsibility for this statute and, in its guidance has asked that questions regarding criminal enforcement be referred to the local ATF office. Prosecutive responsibility for these matters rests with the United States Attorney and the Terrorism and Violent Crime Section of the Criminal Division (202) 307-3950.

Enclosures



U.S. Department of Justice
Office of Intergovernmental Affairs

Director

Washington, D.C. 20530

December 6, 1996

MEMORANDUM FOR: All State Attorneys General

FROM: Nicholas M. Gess
Director
Office of Intergovernmental Affairs

SUBJECT: Identifying Law Enforcement Agents Who Have
Misdemeanor Convictions for Domestic Violence

There has been a recent change in the law pertaining to possession of firearms or ammunition. On September 30, 1996, Title 18, United States Code, Section 922(g)(9) took effect, making it illegal for anyone who has been convicted of a misdemeanor crime of domestic violence to possess any firearm or ammunition. This provision applies to persons at any time prior to or after the passage of the September 30, 1996, law. Moreover, there is no exemption for law enforcement officers and agents.

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12/06/96

FRI 11:32 FAX 202 514 7864

DOJ OPLIA

--- DENNIS BURKE

005

be aware that some of you may be asked to produce similar materials for use in your jurisdiction and we thought that sharing our the product of our work might be of assistance.

Please also note that in the case of state, county and local law enforcement officers who are deputized by one or more Department of Justice law enforcement agencies, the Department of Justice will ask the chief officer of the state, county or local agency to certify the deputized officer's continued eligibility to possess firearms and ammunition.

To that end, we enclose the following materials:

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Enclosures

MEMORANDUM

TO: All Employees Authorized to Possess Government-Issued
Firearms and Ammunition

FROM: [Agency Heads]

There has been a recent change in the law pertaining to possession of firearms or ammunition. On September 30, 1996, Title 18, United States Code, Section 922(g)(9) took effect, making it illegal for anyone who has been convicted of a misdemeanor crime of domestic violence to possess any firearm or ammunition. "Misdemeanor crime of domestic violence" is generally defined as any offense--whether or not explicitly described in a statute as a crime of domestic violence--which has, as its factual basis, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by the victim's current or former domestic partner, parent, or guardian. The term "convicted" is generally defined in the statute as excluding anyone whose conviction has been expunged or been set aside, or has received a pardon. A copy of the statute is attached. Please carefully review it.

This provision applies to persons convicted at any time prior to or after the passage of the September 30, 1996 law. Moreover, there is no exemption for law enforcement officers and agents. If you have ever been convicted of a misdemeanor crime of domestic violence within the meaning of the statute, continued retention of any firearm or ammunition, whether Government-issued or privately owned, may subject you to felony criminal penalties, including a sentence of imprisonment of up to ten years and a fine of up to \$250,000, as well as administrative action.

If you are affected by this statute: (1) you may not possess any firearm or ammunition; and (2) you must return any Government-issued firearm or ammunition to [your immediate supervisor]. Furthermore, since the statute makes it illegal for you to possess any firearm or ammunition, any previously issued authorization to possess a firearm or ammunition is revoked.

Attached to this memorandum is a qualification inquiry, which you must complete and return to [your immediate supervisor] within ten (10) working days of receipt. If you have any questions, you may contact [your immediate supervisor, agency ethics officer, union representative], or private attorney.

QUALIFICATION INQUIRY

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

(a) The purpose is to obtain information which will assist in the determination of whether personnel reassignment and/or administrative action are warranted.

(b) You have a duty to complete this form. Agency disciplinary action, including dismissal, may be undertaken if you refuse to answer or if you fail to reply fully and truthfully.

(c) Neither your answers nor any information or evidence gained by reason of your answers can be used against you in any criminal prosecution for a violation of Title 18, United States Code, Section 922(g)(9). However, the answers you furnish and any information or evidence resulting therefrom may be used against you in a prosecution for knowingly and willfully providing false statements or information, and in the course of agency disciplinary proceedings.

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

Initial and date: YES _____ NO _____

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

Court/Jurisdiction: _____

Docket/Case Number: _____

Statute/Charge: _____

Date sentenced: _____

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

Name and Title:
[print or type] _____

Agency/Duty Station: _____

Signature

Date

18 U.S.C. § 922(s)
(Brady Statement)

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

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

(B) a statement that the transferee--

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

(ii) is not a fugitive from justice;

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

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

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

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

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

(C) the date the statement is made; and

(D) notice that the transferee intends to obtain a handgun from the transferor.

18 U.S.C. § 925

Exceptions: Relief from disabilities

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

(a) Definitions -

18 U.S.C. § 921

* * * * *

(32) The term "intimate partner" means, with respect to a person, the spouse of the person, a former spouse of the person, an individual who is the parent of a child of the person, and an individual who cohabitates or has cohabitated with the person.

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

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

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

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

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

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

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

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

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

18 U.S.C. § 922(d)

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

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

(2) is a fugitive from justice;

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

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

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

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

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

(8) is subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child, except that this paragraph shall only apply to a court order that--

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

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

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

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

18 U.S.C. § 922(g)

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

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

(2) who is a fugitive from justice;

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

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

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

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

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

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

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

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

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

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

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

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

MODEL LETTER TO STATE AND LOCAL AGENCIES

Dear [Salutation]:

We appreciate the cooperative efforts between our two agencies, as evidenced by the deputation of officers from your department as [TITLE(s)]. According to our records, the following officers are currently deputized [or see Attachment ____]:

<u>Name</u>	<u>DOB</u>	<u>SSN</u>
***	***	***

There has been a recent change in the law pertaining to possession of firearms and ammunition which affects all law enforcement officers. On September 30, 1996, Section 922(g)(9) of Title 18, United States Code, took effect, making it illegal for anyone who has previously been convicted of a misdemeanor crime of domestic violence (MCDV) to possess firearms or ammunition. The term "MCDV" means "any offense, whether or not explicitly described in a statute as a crime of domestic violence, which has, as its factual basis, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by the victim's current or former domestic partner, parent or guardian." The term, "convicted" is generally defined in the statute as excluding anyone whose conviction has been expunged or been set aside, or anyone who has received a pardon.

This provision applies to persons convicted at any time prior to or after the passage of the September 30, 1996, law. Moreover, there is no exemption for any law enforcement officer. Accordingly, any person who has previously been convicted of one or more MCDVs who possesses a firearm or ammunition commits a federal felony.

We are in the process of determining which Department of Justice law enforcement agents, and which deputized state and local officers, are subject to the prohibitions of Section 922(g)(9). We ask that you provide a letter containing a certification of those officers listed above who have not previously been convicted of a misdemeanor crime of domestic violence within the meaning of

Also attached is a letter from John Magaw, Director of the Bureau of Alcohol, Tobacco and Firearms, to the heads of all state and local law enforcement agencies that discusses Section 922(g)(9) in greater detail.

Section 922(g)(9).² You need not provide any information as to officers whom you do not certify. However, the absence of a certification for a particular officer within 30 days from the date of this letter will result in the revocation of the officer's federal deputation.

The purpose of this letter is to assist this agency in complying with its obligation to assure that those authorized to carry firearms under its authority are in compliance with federal law. This letter does not and is not intended to cover any obligations which you independently may have under the law with respect to your employees who are authorized to possess firearms or ammunition in their official duties. As to all future deputations, the form requesting deputation will be amended to contain a certification under Section 922(g)(9).

These requirements are the result of an Act of Congress and we have absolutely no discretion in this matter. The requirements of this statute cannot be waived or extended other than by a new Act of Congress.

Once again, thank you for your participation in cooperative law enforcement. I look forward to working with you in the future. As always, please feel free to call me at [phone #] if you have any questions.

Sincerely,

[Signatory]

² The certification should recite or attach a list of officers that "have not previously been convicted of a misdemeanor crime of domestic violence within the meaning of Section 922(g)(9)."



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

DIRECTOR

OPEN LETTER TO ALL STATE AND LOCAL
LAW ENFORCEMENT OFFICIALS

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

Act adds new firearms disability

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

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

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

- 2 -

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

New disability applies to law enforcement officers

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

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

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

- 3 -

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

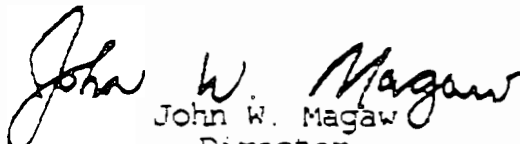
Brady Act

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

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

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

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


John W. Magaw
Director

QUESTIONS AND ANSWERS REGARDING
MISDEMEANOR CRIME OF DOMESTIC VIOLENCE

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

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

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

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

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

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

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



DIRECTOR

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

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

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

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

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

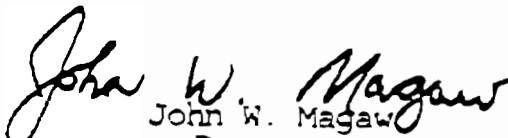
This definition includes all misdemeanors that involve the use or attempted use of physical force (e.g., simple assault, assault and battery), if the offense is committed by one of the defined parties. This is true whether or not the State statute or local ordinance specifically defines the offense as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

- 2 -

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

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

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


John W. Magaw
Director



DIRECTOR

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

OPEN LETTER TO ALL FEDERAL FIREARMS LICENSEES

The purpose of this letter is to provide you with information on the provisions of the recently enacted Omnibus Consolidated Appropriations Act of 1997 (the Act). This legislation made two amendments to the Gun Control Act of 1968 (GCA) that affect Federal firearms licensees. The amendments were effective on the date of enactment, September 30, 1996.

The following is a description of those two amendments of concern to Federal firearms licensees. Regulations explaining the requirements will be published shortly.

Sales of curio or relic firearms

The Act amended 18 U.S.C. § 923(j) to allow Federal firearms licensees to sell curio or relic firearms to other licensees away from their licensed premises. This amendment applies only to firearms that are classified as a curio or relic. Federal regulations define the term "curios or relics" as firearms that are of special interest to collectors by reason of some quality other than is associated with firearms intended for sporting use or as offensive or defensive weapons. To be recognized as curios or relics, firearms must fall within one of the following categories:

- (1) Firearms which were manufactured at least 50 years prior to the current date, but not including replicas thereof;
- (2) Firearms which are certified by the curator of a municipal, State, or Federal museum which exhibits firearms to be curios or relics of museum interest; or
- (3) Any other firearms which derive a substantial part of their monetary value from the fact that they are novel, rare, bizarre, or because of their association with some historical figure, period, or event. Proof of qualification of a particular firearm under this category may be established by evidence of present value and evidence that like firearms are not available except as collector's items, or that the value of like firearms available in ordinary commercial channels is substantially less.

- 2 -

Licensees are still subject to all recordkeeping requirements in the regulations concerning their sale of curios or relics. In addition, it is suggested that licensees selling a curio or relic firearm away from their licensed premises indicate in their acquisition/disposition record where the sale took place.

Persons convicted of a misdemeanor crime of domestic violence

The Act also amended the GCA to make it unlawful for any person convicted of a "misdemeanor crime of domestic violence" to ship, transport, possess, or receive firearms or ammunition. It also made it unlawful for any person to sell or otherwise dispose of firearms or ammunition to any recipient knowing or having reasonable cause to believe that the person has been convicted of such a misdemeanor.

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

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

This definition includes all misdemeanors that involve the use or attempted use of physical force (e.g., simple assault, assault and battery), if the offense is committed by one of the defined parties. This is true whether or not the State statute or local ordinance specifically defines the offense as a domestic violence misdemeanor. For example, a person convicted of misdemeanor assault against his or her spouse would be prohibited from receiving or possessing firearms or ammunition. Moreover, the prohibition applies to persons convicted of such misdemeanors at any time, even if the conviction occurred prior to the new law's effective date, September 30, 1996. As of the effective date of the new law, such a person may no longer possess a firearm or ammunition. However, a conviction would not be disabling if it has been expunged, set-aside, pardoned or the person has had his or her civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense) AND the person is not otherwise prohibited from possessing firearms or ammunition.

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We are in the process of revising all applicable forms to reflect this new provision. These will be provided to you as soon as possible. In the meantime, you should inquire of your customers whether they have been convicted of a disqualifying domestic violence misdemeanor and avoid any firearm or ammunition transfers to such persons.

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


John W. Magaw
Director



GENERAL COUNSEL

DEPARTMENT OF THE TREASURY
WASHINGTON

November 25, 1996

MEMORANDUM TO JACK QUINN

From:

Edward S. Knight *ESK*

Subject:

ATF open letters interpreting the Lautenberg Amendment

Pursuant to its responsibilities as the federal firearms agency, the Bureau of Alcohol, Tobacco, and Firearms (ATF) has drafted open letters to law enforcement agencies, federal firearms licensees, and the general public concerning implementation of the recently-enacted Lautenberg Amendment (misdemeanor domestic violence conviction constitutes a bar to firearms ownership). Copies of these letters are attached.

The Office of the Attorney General, the Office of Legal Counsel and the Office of the Solicitor General have reviewed and agree with the language of ATF's open letters. DOJ agreement was particularly important because of the potential effect of ATF's position on the Brady gun control litigation pending before the Supreme Court. The Solicitor General will be arguing the Brady case before the Court on December 3.

The Solicitor General has requested that ATF's open letters be issued on Monday November 25 and in no event later than Tuesday November 26 in order to ensure that the Court may take judicial notice of their content prior to the oral argument. The ATF letters have been cleared through Treasury and we expect that they will be issued today, Monday, November 25.

Because of the legal and public significance of this issue, we are delivering a copy of the letters today by hand to your office. In addition, Sylvia Mathews believes the Administration should make special efforts to inform interested parties such as law enforcement, women's rights, and gun control groups about its implementation plans. Joyce Carrier, Deputy Assistant Secretary for Public Liaison, will be happy to work with the White House on this matter. We would appreciate your referring these materials to the appropriate staff.

Attachments



DIRECTOR

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

**OPEN LETTER TO ALL STATE AND LOCAL
LAW ENFORCEMENT OFFICIALS**

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

New disability applies to law enforcement officers

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

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

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

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

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


John W. Magaw
Director



DIRECTOR

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

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

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

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John W. Magaw
Director



DIRECTOR

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

OPEN LETTER TO ALL FEDERAL FIREARMS LICENSEES

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The following is a description of those two amendments of concern to Federal firearms licensees. Regulations explaining the requirements will be published shortly.

Sales of curio or relic firearms

The Act amended 18 U.S.C. § 923(j) to allow Federal firearms licensees to sell curio or relic firearms to other licensees away from their licensed premises. This amendment applies only to firearms that are classified as a curio or relic. Federal regulations define the term "curios or relics" as firearms that are of special interest to collectors by reason of some quality other than is associated with firearms intended for sporting use or as offensive or defensive weapons. To be recognized as curios or relics, firearms must fall within one of the following categories:

- (1) Firearms which were manufactured at least 50 years prior to the current date, but not including replicas thereof;
- (2) Firearms which are certified by the curator of a municipal, State, or Federal museum which exhibits firearms to be curios or relics of museum interest; or
- (3) Any other firearms which derive a substantial part of their monetary value from the fact that they are novel, rare, bizarre, or because of their association with some historical figure, period, or event. Proof of qualification of a particular firearm under this category may be established by evidence of present value and evidence that like firearms are not available except as collector's items, or that the value of like firearms available in ordinary commercial channels is substantially less.

Licensees are still subject to all recordkeeping requirements in the regulations concerning their sale of curios or relics. In addition, it is suggested that licensees selling a curio or relic firearm away from their licensed premises indicate in their acquisition/disposition record where the sale took place.

Persons convicted of a misdemeanor crime of domestic violence

The Act also amended the GCA to make it unlawful for any person convicted of a "misdemeanor crime of domestic violence" to ship, transport, possess, or receive firearms or ammunition. It also made it unlawful for any person to sell or otherwise dispose of firearms or ammunition to any recipient knowing or having reasonable cause to believe that the person has been convicted of such a misdemeanor.

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

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We are in the process of revising all applicable forms to reflect this new provision. These will be provided to you as soon as possible. In the meantime, you should inquire of your customers whether they have been convicted of a disqualifying domestic violence misdemeanor and avoid any firearm or ammunition transfers to such persons.

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


John W. Magaw
Director

**QUESTIONS AND ANSWERS REGARDING
MISDEMEANOR CRIME OF DOMESTIC VIOLENCE**

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

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

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

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

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

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

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

FAX TO
BETH
842-4396
From: DENNIS

OPEN LETTER TO ALL FEDERAL, STATE AND LOCAL LAW ENFORCEMENT OFFICIALS

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

Act adds new firearms disability

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

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

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

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

New disability applies to law enforcement officers

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

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

In cases where your agency becomes aware of individuals subject to this disability, we recommend that such persons be encouraged to relinquish all firearms in their possession immediately to a third party, such as their attorney, their local police agency, or a firearms dealer. If such person refuses to relinquish the firearm, and your agency is without authority to retain or seize the firearm, we recommend that you contact the local ATF office.

Further guidance will be provided on the effect of the new law on criminal history checks under the Brady law. ATF forms are being revised to reflect the new category of prohibited persons.

- 3 -

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

John W. Magaw
Director

QUESTIONS AND ANSWERS REGARDING MISDEMEANOR CRIME OF DOMESTIC VIOLENCE

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

A. No, X may no longer possess firearms.

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

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

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

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

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

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OPEN LETTER TO ALL FEDERAL FIREARMS LICENSEES

The purpose of this letter is to provide you with information on the provisions of the recently enacted Omnibus Consolidated Appropriations Act of 1997 (the Act). This legislation made two amendments to the Gun Control Act of 1968 (GCA) that directly affect Federal firearms licensees. The amendments were effective on the date of enactment, September 30, 1996.

The following is a description of those two amendments of concern to Federal Firearms licensees. Regulations explaining the requirements will be published shortly.

Sales of curio or relic firearms

The Act amended 18 U.S.C. § 923(j) to allow Federal firearms licensees to sell curio or relic firearms to other licensees away from their licensed premises. This amendment applies only to firearms that are classified as a curio or relic. Federal regulations define the term "curios or relics" as firearms that are of special interest to collectors by reason of some quality other than is associated with firearms intended for sporting use or as offensive or defensive weapons. To be recognized as curios or relics, firearms must fall within one of the following categories:

- (1) Firearms which were manufactured at least 50 years prior to the current date, but not including replicas thereof;
- (2) Firearms which are certified by the curator of a municipal, State, or Federal museum which exhibits firearms to be curios or relics of museum interest; or
- (3) Any other firearms which derive a substantial part of their monetary value from the fact that they are novel, rare, bizarre, or because of their association with some historical figure, period, or event. Proof of qualification of a particular firearm under this category may be established by evidence of present value and evidence that like firearms are not available except as collector's items, or that the value of like firearms available in ordinary commercial channels is substantially less.

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Licensees are still subject to all recordkeeping requirements in the regulations concerning their sale of curios and relics. In addition, it is suggested that licensees selling a curio or relic firearm away from their licensed premises indicate in their acquisition/disposition record where the sale took place.

Persons convicted of a misdemeanor crime of domestic violence

The Act also amended the GCA to make it unlawful for any person convicted of a "misdemeanor crime of domestic violence" to ship, transport, possess, or receive firearms. It also made it unlawful for any person to sell or otherwise dispose of a firearm to any recipient knowing or having reasonable cause to believe that the person has been convicted of such a misdemeanor.

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

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

This definition includes all misdemeanors that involve the use or attempted use of physical force (e.g., simple assault, assault and battery), if the offense is committed by one of the defined parties. This is true whether or not the statute specifically defines the offense as a domestic violence misdemeanor. For example, a person convicted of misdemeanor assault against his or her spouse would be prohibited from receiving or possessing firearms. Moreover, the prohibition applies to persons convicted of such misdemeanors at any time, even if the conviction occurred prior to the new law's effective date, September 30, 1996. As of the effective date of the new law, such a person may no longer possess a firearm. However, a conviction would not be disabling if it has been expunged, set-aside, pardoned or the person has had his or her civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense).

The Act also amended the GCA so that employees of government agencies convicted of a qualifying misdemeanor would not be exempt from this new disability with respect to their receipt or possession of firearms. Thus, law enforcement officers and other

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government officials who have been convicted of a qualifying misdemeanor will not be able to lawfully possess or receive firearms for use in performing their official duties. This disability applies to firearms issued by government agencies, firearms purchased by officials for use in performing their official duties, and personal firearms possessed by such officials.

We are in the process of revising all applicable forms to reflect this new provision. These will be provided to you as soon as possible. In the meantime, you should inquire of your customers whether they have been convicted of a disqualifying domestic violence misdemeanor and avoid any firearms transfers to such persons.

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

John W. Magaw
Director

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

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

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

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

This definition includes all misdemeanors that involve the use or attempted use of physical force (e.g., simple assault, assault and battery), if the offense is committed by one of the defined parties. This is true whether or not the statute specifically defines the offense as a domestic violence misdemeanor. For example, a person convicted of misdemeanor assault against his or her spouse would be prohibited from receiving or possessing firearms. Moreover, the prohibition applies to persons convicted of such misdemeanors at any time, even if the conviction occurred prior to the new law's effective date, September 30, 1996. However, a conviction would not be disabling if it has been expunged, set aside, pardoned, or the person has had his or

- 2 -

her civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense).

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

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

John W. Magaw
Director

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. fax	Elizabeth Hyman to Dennis Burke [partial] (1 page)	08/23/1996	b(7)(C), b(6)

COLLECTION:

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

FOLDER TITLE:

Lautenberg Gun Bill 1997: (Brady) [1]

2016-0931-S
rc2293

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.

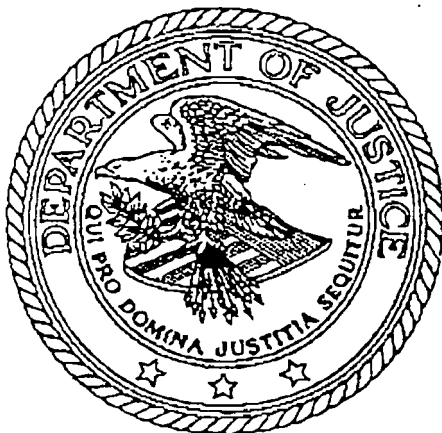
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

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]

U.S. Department of Justice



Washington, D.C. 20530

ELIZABETH HYMAN
Chief of Staff
Violence Against Women
Office
(202) 616-2845 (OFFICE)
(202) 307-3904 (FAX)

DATE: 8/23/96TO: Dennis BurkeFAX #: 456-7028

PHONE #: _____

OF PAGES: 13 (INCLUDING COVER)

COMMENTS: Dennis - I've gotten all of the input on the Q+A's
and one pager from DOJ. ^[001] at ATF is reviewing
the materials right now. Hopefully there will be no clashes in
philosophy! Also attached is the list of 14 states & territories that
have misdemeanors on the books. This info was collected by doing
a state-by-state search of codes.

I know you are swamped ... BUT - could you make sure
to send a copy of the remarks and materials for Monday.
Thanks.

- Liz

**The President's Challenge to Congress
to Pass Legislation
That Prohibits Persons Convicted of Crimes of Domestic Violence
From Possessing a Firearm**

August 26, 1996

- The Clinton Administration, with bipartisan support from Congress, won passage of the landmark 1994 Violence Against Women Act. This legislation represents a turning point in our national effort to break the cycle of domestic violence.
- By combining tough new federal penalties with substantial resources to the states and local communities, this legislation has already had an enormous impact on women and families across the country.
- Last year, all states and territories received a share of \$26 million under the STOP Violence Against Women Program. (STOP stands for Services, Training, Officers and Prosecutors). This year, states are receiving an additional \$130 million in STOP funds. States are using this money to train law enforcement officers, expand law enforcement and prosecution agencies, and develop more effective strategies and programs to prevent violent crimes against women.
- The Act also created several new Federal penalties for interstate domestic violence and harassment. These provisions provide a critical new tool to prosecutors to ensure that batterers do not slip through the cracks of the criminal justice system when they cross state lines. We are working with state and local prosecutors and courts to spread the word about these provisions.
- In addition, the Act made it a federal crime for anyone subject to a domestic violence protective order to possess a firearm. This is in addition to the 1968 firearms act which banned convicted felons, and certain other individuals, from possessing a firearm. But we should go further in getting guns out of the hands of batterers.
- Today I am calling on Congress to amend the 1968 firearms statute so that if a person is convicted of any crime of domestic violence, not just a felony, that person forfeits their right to possess a firearm. Senator Lautenberg has introduced legislation that is similar to this proposal. In fact, Senator Lautenberg's proposal passed the Senate in July. We think this is a good start. We are dismayed that the House did not pass similar legislation before leaving for summer recess. We intend to work with Congress to see that the best legislation reaches my desk.
- Expanding the firearms statute will deter convicted batterers from possessing a firearm in the first place, will serve as a model to states to enact similar legislation, and will provide prosecutors with one more charging option when a convicted domestic abuser is caught with a firearm. The time to act is now.
- A law on the books may also encourage states to record crimes as crimes of domestic violence. As states become more sophisticated in their record-keeping capabilities and it is immediately possible to determine if an individual is a misdemeanor domestic violence offender, the benefit of our actions today will be more apparent and powerful.

- FOR INTERNAL USE -

The President's Challenge to Congress To Develop Legislation To Prohibit Persons Convicted of Crimes of Domestic Violence From Possessing a Firearm

August 26, 1996

Questions and Answers

The Proposal

Q: What are you asking Congress to do?

A: Our goal is to make sure that batterers and abusers cannot possess a firearm. Congress should amend the Gun Control Act of 1968 [18 U.S.C. §922] so that it is unlawful for a person convicted of a crime of domestic violence to possess a firearm.

Q: What does the law presently do?

A: Presently, it is unlawful for anyone convicted of a felony, including a felony of domestic violence, to possess a firearm. It is also unlawful for anyone subject to certain domestic violence protection orders to possess firearms.

In addition, fugitives from justice, unlawful users or addicts of drugs, persons adjudicated mentally defective, illegal aliens, persons dishonorably discharged from the military, and persons who have renounced American citizenship are all prohibited from possessing a firearm.

Q: What population of domestic violence offender does this address?

A: Specifically, it would add individuals convicted of a misdemeanor crime of domestic violence to those who are prohibited from possessing firearms.

Q: Why is this important?

A: We want to prevent victims of domestic violence from becoming victims of gun violence. This administration has long recognized that domestic violence is a serious crime. Experts agree. The immediate past President of the American Medical Association, Bob McAfee, recently called family violence a major public health threat. We already know that it is a major public safety threat. Of the nearly 6,000 COPS FAST grantees representing populations of less than 50,000, domestic violence was rated as the number two problem faced by their departments – requiring more

attention than even drugs or gangs. (The number one problem was property crimes). A recent report from the American Psychological Association found that children who are abused and who witness violence at home are substantially more likely to commit violent acts themselves. Given these high stakes, we must take every step possible to reduce domestic violence. Taking guns out of the hands of all domestic violence offenders is the next step.

Q: Why should we create a new federal law?

A: A new federal law has two immediate specific benefits. First, its immediate impact may be that it deters domestic abusers from seeking to possess a firearm in the first place. Secondly, it may serve as a model to the states, and encourage them to pass similar legislation.

In the long-term, as states become more sophisticated in their record-keeping capabilities and it is immediately possible to determine if an individual is a misdemeanor domestic violence offender, these benefits will be more powerful. In the short-term, the addition of this category of offender will provide prosecutors with one more charging option when a convicted domestic abuser is caught possessing a firearm.

Relationship to Brady

Q: Is this an extension of the Brady law?

A: This proposal adds another category to those prohibited from possessing a firearm.

Q: For all practical purposes, if you amend the firearms statute, don't you automatically amend Brady?

A: No, this does not amend Brady. It is true that when you add another category to those prohibited from possessing a firearm, that background checks can be done pursuant to Brady. However, the point of this legislation is to work toward a day when domestic violence offenders will not have guns. The first step is to make this a prohibited category under the 1968 firearms act.

Background:

Amending the 1968 Gun Control Act does not amend the Brady law — it only adds a ninth category to the list of persons federally prohibited from possessing firearms. The proposed amendment does, however, affect the Brady law. By enacting the proposed amendment, Chief Law Enforcement Officers (CLEOS), acting pursuant to

Brady should "make a reasonable effort" to determine whether a prospective handgun purchaser has been convicted of a domestic violence crime in addition to the eight current prohibitions under the 1968 Gun Control Act.

We have made clear in regard to other categories under Brady, however, that we do not expect Chief Law Enforcement Officers to go to any extraordinary lengths to determine whether the transfer of a firearm would violate federal, state or local law. Until it is possible to make that determination by a "reasonable effort" -- and in this context, that means that states have readily available in their state criminal history records that an individual has been convicted of a misdemeanor crime of domestic violence; or that the CLEO has personal knowledge that an individual was convicted of a misdemeanor of domestic violence -- then a background check based on this category will not be strictly enforced.

Q: If you are not amending Brady then what purpose is there in extending the firearms statute?

A: Because we must take the first step by declaring that a domestic violence offender has forfeited his right to possess a firearm.

As I stated before, a new federal law has two immediate specific benefits. First, its immediate impact may be that it deters domestic abusers from seeking to possess a firearm in the first place. Secondly, it may serve as a model to the states, and encourage them to pass similar legislation.

In the long-term, as states become more sophisticated in their record-keeping capabilities and it is immediately possible to determine if an individual is a misdemeanor domestic violence offender, these benefits will be more powerful. In the short-term, the addition of this category of offender will provide prosecutors with one more charging option when a convicted domestic abuser is caught possessing a firearm.

NB: It is also unwise to open the Brady Act to further amendments when so many in Congress may seek to abolish it altogether.

Relationship to Lautenberg

Q: Is this an endorsement of the Lautenberg legislation?

A: We applaud the efforts taken by Senator Lautenberg and Congressman Torricelli (who has introduced the companion bill in the House), and we are dismayed that the House did not also take up this legislation. We share their position that all domestic violence offenders should not be able to possess a firearm. We stand ready to work

with Congress to strengthen the proposal and craft the best piece of legislation to accomplish our mutual goal.

Q: Specifically, what do you find problematic with Lautenberg?

A: We are going to work with Senator Lautenberg, Congressman Torricelli and the entire Congress to see that the best legislation is passed. We share the same core belief that batterers and abusers should not have guns.

The Statistical Picture

Q: How often are guns used to commit crimes of domestic violence?

A: In 1994, there were 88,500 incidents of domestic violence where a firearm was present. For all domestic violence crimes in 1994, guns were present 5% of the time (domestic violence includes crimes of murder, rape, robbery, aggravated assault, and simple assault by a family member or intimate).

Females are particularly at risk:

- In 90% of these domestic violence cases involving firearms, the victim was a female (data comes from the National Crime Victimization Survey, 1994).
- In crimes of domestic violence, a gun is 3 times more likely to be used when the victim is female (for male-victim domestic violence incidents, a gun is present 2% of the time; for female-victim domestic violence incidents, a gun is present 6% of the time).

Q: How many people are shot to death each year as a result of domestic violence?

A: In 1994, there were 1,970 homicides where the offender was a family member or had an intimate relationship with the victim (according to weighted estimates from the FBI's Supplemental Homicide Report).

Q: How many women are killed each year by an intimate (not only firearm-related deaths)?

A: In 1994, there were 1,348 women who were killed by their husbands or boyfriends.

(FBI, Crime in the United States, 1994. Table 2.12)

Q: How often are domestic violence victims threatened with a firearm?

In violence involving intimates, the offender is armed 18% of the time.

However, in those cases where an intimate is armed in a domestic violence situation, one-third of those cases involve firearms (*Violence Against Women*, January, 1994 p. 8).

[Anecdotal Argument that can be discussed with DV Advocates]. Just the mere knowledge that a gun may be in the residence, or in the possession of the abuser, is the critical factor that will keep a woman in a violent relationship. Conversely, the knowledge that an abuser may have more difficulty obtaining a gun, could be empowering -- enabling the woman to leave the abusive relationship.

Q: What is the likelihood of repeat domestic violence offenses (without taking into account if a firearm is involved or not)?

A: In 1994 nearly a third of the women who experienced violence at the hands of an intimate were victimized again within six months. (BJS, *Preventing Domestic Violence Against Women* August, 1986. p. 3)

According to the BJS publication, *Violence Between Intimates* (1994, p. 2), One in five females victimized by their spouse or ex-spouse reported to the NCVS that they had been a victim of 3 or more assaults in the last 6 months.

Q: How many crimes of domestic violence are misdemeanors?

A: Because few if any states distinguish crimes of domestic violence from all other crime categories, there are no statistics on this. Trespassing, assault and battery and harassing phonecalls may or not be a domestic violence crime. Nevertheless, as a practical matter, we know that for all crime categories, there are four times as many misdemeanors as there are felonies in this country. It stands to reason that the ratio of domestic violence misdemeanors to felonies would be comparable if not more.

Q: How frequently are felony domestic violence crimes pleaded down to misdemeanors or charged as a misdemeanor in the first place when a felony designation may have been appropriate?

A: **[Anecdotal Argument that can be discussed with DV Advocates].** There is no statistical data on this. As a general principle, however, we do know that many

women who are victims of domestic abuse fear that bringing legal action will result in retaliation and further abuse. It is therefore not unimaginable that cases deserving of felony prosecution are pleaded down to misdemeanors because the woman is fearful to prosecute and will not cooperate with prosecutors.

Ability to Enforce the Proposal

Q: How will we be able to determine if an offender has been convicted of a misdemeanor of domestic violence?

A: The fact is that states are not far along in having the ability to distinguish domestic violence crimes in their criminal history record systems, let alone the distinctions between general misdemeanors and misdemeanors of domestic violence.

Q: How many states currently keep any kind of record of domestic violence?

A: A 1995 NIJ survey conducted by the Justice Research and Statistics Association found the following. 47 states and territories responded to the survey. Of those, 35 said that they collected some kind of statistics on domestic violence. There was however a wide variation in how each state or territory defined domestic violence offenses. The primary purpose for this statistical gathering was for the allocation of law enforcement resources and did not have any connection to criminal history record keeping. The information typically gathered was at the time of arrest or by non-law enforcement groups seeking attention for the issue of domestic violence. In short, if there is collection of such data, it is done at the time of arrest, does not carry over to conviction records and would largely be of no value in attempting to identify in one's criminal history record if one had been convicted of a crime of domestic violence.

Q: How many states have defined misdemeanor crimes of domestic violence on their statute books?

A: Approximately fourteen states and territories have specific domestic violence misdemeanors.

Q: What can the federal government do to assist states in more accurately recording domestic violence crimes?

A: The most practical proposal is to assist states in improving their criminal history record-keeping abilities. This is already happening through the National Criminal History Records Improvement Program (NCHIP). Specifically, in FY 1996, the NCHIP program instituted the "National Stalker and Domestic Violence" Program.

- Announced in May 1996, these monies can be used by states to 1) identify, collect and enter information on felony and misdemeanor arrests, convictions, and arrest warrants for violating stalking and domestic violence protection orders; 2) capture, flag, and make electronically available domestic violence and/or stalking protection orders; and 3) connect to the national system. Applications for this program were due July 29, 1996.
- \$1.5 million was appropriated for FY 1996. \$1.75 million was designated in the House mark-up for FY 1997. The Office of Justice Programs has requested \$2.75 million for FY 1998.
- NB: This amount of money is well short of what BJS estimates would be necessary to capture and identify misdemeanor crimes of domestic violence.

Status of Firearm Statute and Protection Orders

Q: Specifically, what does the firearms prohibition do when someone is subject to a domestic violence restraining order?

A: The VAWA firearms disability provision makes it unlawful for any person subject to a court order restraining that person from harassing, stalking, or threatening an intimate partner or child of an intimate partner, to possess, transport, ship, or receive a firearm or ammunition.

Q: How successful have you been in enforcing that provision?

A: To date there have been three prosecutions brought. (1 awaits trial; 1 awaits sentencing; and 1 resulted in a guilty plea and a 12 month sentence).

We have made a concerted effort to work with state, local and federal judges and prosecutors to achieve widespread education of this provision.

We are also working with states to develop model restraining order language which will trigger this provision. In Kentucky for example, state courts use restraining order language that mirrors the VAWA firearms provision. As a result, Kentucky has drastically limited the number of illegally purchased handguns by people subject to restraining orders.

- NB: The example of Kentucky is noteworthy. Because they have an automated registry of domestic violence protection orders and they use the federal restraining order language, they have been able to drastically limit the number of illegally purchased firearms by people

subject to a restraining order. In 1995 alone, Kentucky denied 313 handgun purchases because the prospective purchaser was the subject of a disqualifying restraining order.

STATES WITH SEPARATE DOMESTIC VIOLENCE MISDEMEANORS

Arkansas:

1. Domestic battering in the first degree (class B felony)
Ark. Code Sec. 5-26-303 (West 1996)
2. Domestic battering in the second degree (Class D felony)
Ark. Code Sec. 5-26-304 (West 1996)
3. Domestic battering in the third degree (Class A misdemeanor)
Ark. Code Sec. 5-26-305
4. Aggravated assault on a family or household member (Class D felony)
Ark. Code Sec. 5-26-306 (West 1996)
5. First degree assault on a family or household member
(Class A misdemeanor)
Ark. Code Sec. 5-26-307
6. Second degree assault on a family or household member
(Class B misdemeanor)
Ark. Code Sec. 5-26-308 (West 1996)
7. Third degree assault on a family or household member
(Class C misdemeanor)
Ark. Code Sec. 5-26-309 (West 1996)

[California

§ 273.5 Corporal injury of spouse or cohabitant of opp sex;
counselling as a condition of probation. ---> FELONY
But "wobbler" at prosecutor's discretion]

} felony not
misdemeanor

(Idaho

Domestic assault or battery (does not say if felony or misdeme)
ID Code 18-918 (West 1996)

) may not be
misdemeanor

Illinois

Domestic Battery (Class A Misdemeanor/ second or subsequent violation)

IL ST. CH 720 § 12-3.2 (West 1996)

Illinois Domestic Violence Act of 1986

IL ST. CH 750 § 60/103 (West 1996)

Iowa Domestic Abuse Assault § 708 2A. misdemeanor

Michigan Domestic assault (misdemeanor/ felony for third offense)
Mich. Comp. Laws Ann. § 750.81(2) (West 1996 Supp.)

Minnesota Domestic assault (misdemeanor; gross misdemeanor; felony)
MN ST. § 609.2242 (West 1996)

Montana Domestic Abuse (Misdemeanor; felony on subsequent convictions)
MT ST. § 45-5-206 (West 1996)

New Mexico

1. Assault against a household member (Petty misdemeanor)
NM ST. § 30-3-12 (West 1996)
2. Aggravated assault against a household member (fourth degree felony)
NM ST. § 30-3-13 (West 1996)
3. Assault against a household member with intent to commit a violent felony (third degree felony)
NM ST. § 30-3-14 (West 1996)
4. Battery against a household member (petty misdemeanor)
NM ST. § 30-3-15 (West 1996)
5. Aggravated battery against a household member (third degree felony)
NM ST. § 30-3-16 (West 1996)

Ohio Domestic Violence (Misdemeanor; Felony)
OH Code § 2919.25 (West 1996)

South Carolina Criminal Domestic Violence Acts Prohibited
SC Code 16-25-20
Penalty upon third conviction for violation of this section,
see 16-25-40

~~VERMONT~~

Vermont

1. Domestic Assault (imprisoned not more than one year/ \$5000)
VT ST. § 1042 (West 1996)
2. First degree aggravated domestic assault (felony)

VT ST. § 1043 (West 1996)
3. Second degree aggravated domestic assault
VT ST. § 1044 (West 1996)

Virginia: § 18.2-57.2 Assault and Battery ag. a family or household member -- misdemeanor (1995 Supp)

West Virginia Domestic Violence: Domestic battery and Domestic assault
(Misdemeanor/ felony on third offense)
W. VA. Code § 61-2-28 (1996)

Territories

Guam Family Violence (Misdemeanor or third degree felony)
Guam Code § 30.20 (West 1996).

Puerto Rico Abuse. 1991 § P.R. Laws 631

**The President's Challenge to Congress
to Pass Legislation
That Prohibits Persons Convicted of Crimes of Domestic Violence
From Possessing a Firearm**

August 26, 1996

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- In addition, the Act made it a federal crime for anyone subject to a domestic violence protective order to possess a firearm. This is in addition to the 1968 firearms act which banned convicted felons, and certain other individuals, from possessing a firearm. But we should go further in getting guns out of the hands of batterers.
- Today I am calling on Congress to amend the 1968 firearms statute so that if a person is convicted of any crime of domestic violence, not just a felony, that person forfeits their right to possess a firearm. Senator Lautenberg has introduced legislation that is similar to this proposal. In fact, Senator Lautenberg's proposal passed the Senate in July. We think this is a good start. We are dismayed that the House did not pass similar legislation before leaving for summer recess. We intend to work with Congress to see that the best legislation reaches my desk.
- Expanding the firearms statute will deter convicted batterers from possessing a firearm in the first place, will serve as a model to states to enact similar legislation, and will provide prosecutors with one more charging option when a convicted domestic abuser is caught with a firearm. The time to act is now.
- A law on the books may also encourage states to record crimes as crimes of domestic violence. As states become more sophisticated in their record-keeping capabilities and it is immediately possible to determine if an individual is a misdemeanor domestic violence offender, the benefit of our actions today will be more apparent and powerful.

THE WHITE HOUSE
WASHINGTON

Office of Legislative Affairs
House Liaison
Fax Cover Sheet

Date: _____

To: Christe / ~~Rahm Emanuel~~ / Dennis Burke

Fax Number: 66218 / 66423 / 67028

From: Peter Jacoby
Special Assistant to the President
for Legislative Affairs

at (202) 456-6620

Comments: _____

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Number of pages including cover: 2

HILL BRIEF

Rep. Barr would ban guns to domestic abusers

Rep. Bob Barr (R-Ga.), a leading opponent of stricter gun control laws, said Tuesday he is trying to craft compromise language on a proposal to restrict gun access to those convicted of domestic abuse crimes.

In an interview, Barr was asked about a proposal pushed by Sen. Frank Lautenberg (D-N.J.) that passed the Senate 97-2. Speaker Newt Gingrich (R-Ga.) recently stated on NBC's "Meet the Press" he would favor including such a

proposal in a continuing resolution.

Barr was interviewed on "The Hill Reporter," a one-hour daily talk show jointly sponsored by The Hill and the 300-station United Broadcasting Network.

Rep. Barr

Barr called Lautenberg's proposal unconstitutional and too broad, but he said, "This is an issue I have done a great deal of work on over the last week, and hopefully will have language to include legislation that will be passed this week."

Barr added that his legislation focuses on people who committed acts of domestic violence. "It applies stricter standards and is more narrowly focused than the Lautenberg amendment. I have presented it to the Speaker and hope it will be included."

Asked if he and other supporters of the National Rifle Association (NRA) are disappointed with GOP presidential nominee Bob Dole's decision to abandon previous opposition to a ban on assault weapons, Barr replied, "Yes. I think the Clinton gun ban in 1994 was a bad piece of legislation, and I know a number of members of the Senate also feel that way."

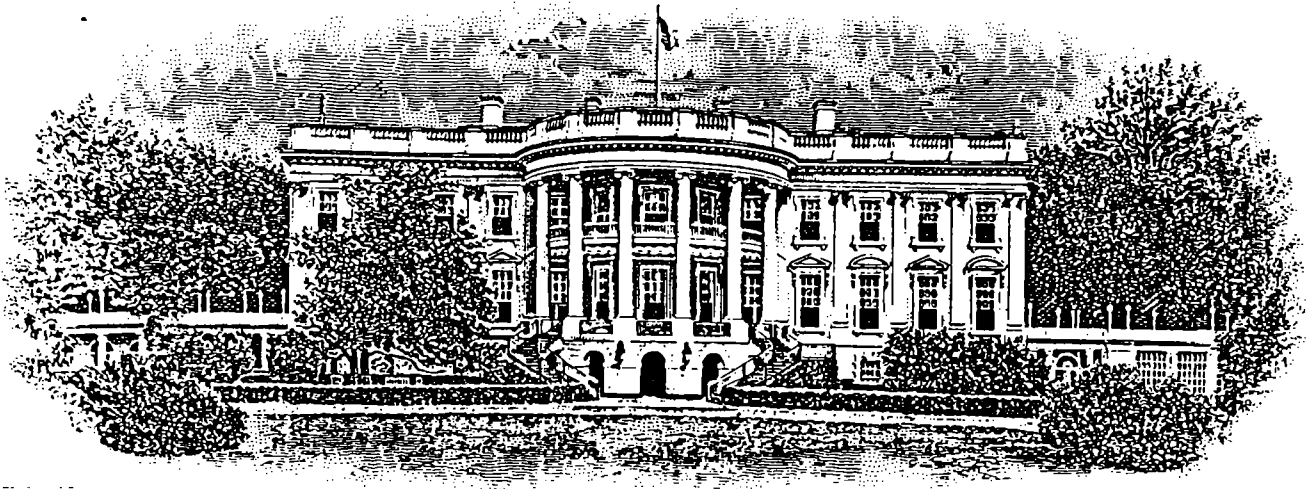
But Barr conceded that the political pressure is strong enough that there will be legislation drafted this year.

"Yes sir," Barr replied.

— DOUG OBEY

6-6218 Chrishe
6-6423 Barron

The White House



DOMESTIC POLICY

FACSIMILE TRANSMISSION COVER SHEET

TO: RAHM

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DRAFT

Honorable Frank R. Lautenberg
Appropriations Committee
Subcommittee on Commerce, Justice, State
the Judiciary and related agencies
United States Senate
Washington, D.C. 20515

Dear Senator Lautenberg:

This is in response to your request for the views of the Department of Justice on S. 2443 "The Gun Victim Compensation Act", S. 1632 the "Domestic Violence Offender Gun Ban" and S. 1113 the "Anti-Gun Trafficking Act of 1995".

→ S. 2443 -- "The Gun Victim Compensation Act" ←

We are extremely sympathetic to the purpose of S. 2443, which is to provide victims of firearms offenses an additional forum for suits against individuals who unlawfully transfer the offending weapons to prohibited persons. We have some concern, however, with another expansion of the role of the federal courts. As recognized by your bill, sections 922(d), 922(b)(1) and 922(x) of title 18 already make it a federal criminal offense to transfer these weapons to certain classes of individuals. It would appear, based on decisions from several state Court of Appeals, that in many jurisdictions a person injured by a weapon that had been illegally transferred presently have a cause of action against the transferor in state court. S. 2443 would simply be giving the victim a choice of courts and not providing additional rights. We believe that the federal courts should be, in most part, reserved for providing a forum when the state system is inadequate or unavailable and we are not convinced that type of situation exists with these types of cases.

Without minimizing our concerns, we have some suggested refinements to S. 2443 resulting in large part from the changes in the federal firearms statutes since you first introduced this legislation.

As presently drafted, Section 2 of the bill creates a new subsection "(j)" to Section 924 of Title 18, United States Code. This should be changed to "(o)" since subsections (j) through (n) already exist.

The first full sentence of Section 2 of S. 2443 creates a cause of action based upon a violation of two criminal sections of Title 18 and the sale, delivery or transfer of "a handgun to a person who the transferor knows or has reasonable cause to believe is a juvenile, except as provided in paragraph (6)". Since S. 2443 was introduced, the "Violent Crime Control and Law Enforcement Act of 1994" has become law. That statute included a new Youth Handgun Safety Act (18 U.S.C. Section 922(x) which made it a criminal offense to sell transfer or deliver a handgun or ammunition to a juvenile with certain exceptions which mirrored the exceptions in

paragraph (6) of S. 2443. As a result of the enactment of this new section S. 2443 can be redrafted to state,

"(1) IN GENERAL.--Any person who sells, delivers, or otherwise transfers-- "(A) a firearm in violation of sections 922(d) or 922(b)(1) or "(B) a handgun in violation of 922(x) shall be liable for damages caused by a discharge of the transferred firearm by the transferee."

In addition, since all of the exceptions included in proposed subsection (6) are included as exceptions in 18 U.S.C. Section 922(x)(A)-(C) that portion of the bill can be deleted as duplicitious.

S. 1632 -- the "Domestic Violence Offender Gun Ban"

S. 1632 addresses a problem which we agree has become increasingly troublesome, i.e., the possession of firearms by individuals who have demonstrated that they are prone toward committing violent acts upon individuals with whom they have a close relationship. Unfortunately, on a daily basis we hear about individuals who have been in long term violent relationship suddenly grabbing a gun and killing someone. S. 1632 will help keep guns out of that volatile situation.

We do have some concerns with the bill as presently drafted. In Section 1 "crime involving domestic violence" is defined in part as a "felony or misdemeanor crime of violence" but those terms are left undefined. As a result it is unclear whether offenses which are often symptoms of domestic abuse, such as trespassing (or unlawful entry), harassing phone calls, threats, or misdemeanor breaking and entering, would be included. Later in Section 1, a list of relationships between the parties given but the relationship of two people cohabitating but not as a spouse is omitted. While we recognize that the definition included in the bill has been used in other sections of this Title, we have recently experienced difficulty in a prosecution due to the omission of this type of relationship.

In Section 2 the proposed amendment to Section 922 proposes adding a new subsection which would state "(9) is under indictment for, or has been convicted in any court of, any crime involving domestic violence." This should be changed to state "is presently facing charges for, or has been convicted in any court of, any crime involving domestic violence." Leaving the language as "under indictment" would eliminate almost all misdemeanor offenses since they are usually charged by complaint, information or some other charging document as well as some felony cases where the prosecution has proceeded by way of a preliminary hearing and information or where an indictment has not yet been filed. (This

same alternative language should be substituted in Section 2(2) of S. 1632.)

With regard to Sections 3 and 4 of S. 1632, the Administration has this year submitted the "Enhanced Prosecution and Punishment of Armed Dangerous Felons Act of 1996". Section 2 of that act states,

Section 921(a)(20) of title 18, United States Code, is amended by adding at the end the following: "Notwithstanding the previous sentence, if the conviction was for a violent felony or a serious drug offense (as defined in section 924(e)(2)(A) and (B)), the person shall be considered convicted for purposes of this chapter irrespective of any pardon, setting aside, expunction or restoration of civil rights."

We believe that individuals convicted of a "crime involving domestic violence" should be included in that provision.

S. 1113 -- the "Anti-Gun Trafficking Act of 1995"

S. 1113 makes amends section 922 of title 18 to make it illegal for an individual to purchase more than one firearm during any 30-day period and also makes it illegal for any licensed dealer to transfer to an individual more than one firearm during any 30-day period. This idea of limiting the number of firearms purchases was first enacted in the Commonwealth of Virginia and more recently in the State of Maryland in an attempt to reduce the number of "straw purchases" which is one of the ways criminals obtain weapons. While we have seen encouraging results from the Virginia limitations we do not think that it is presently appropriate to impose a similar federal nationwide limitation. Under section 922(b) of title 18, firearms dealers are limited to selling firearms to residents of the state in which they operate their business. As a result we believe that is appropriate to let the states experiment with different approaches to the problem of straw purchases especially where different strategies may be more appropriate depending up the circumstances of the particular area.

Criminal Background
As you know the problem of violence especially in conjunction with firearms has become an increasing concern of the public and has been the focus of the Department's efforts since 1993. The Department has been aggressively prosecuting armed, violent criminals and moving toward full implementation of the National Instant Check System. Not only have we fought to curb crime through aggressive prosecution, we have sought to keep guns out of the hands of criminals on the front end, to prevent the crimes from occurring. The Administration has done so through reasonable regulation of firearms, including the Brady Act and the assault weapons ban. These measures, along with legislation to amend the Gun Free Schools Act, 18 U.S.C. Section 924(c) and the

appropriation of the remaining NCHIP funds authorized under the Brady Act of 1994, are sorely needed.

If I may be of further assistance on this or any other matter concerning the Department of Justice, please do not hesitate to contact me.

Sincerely,

**Remarks by Senator Frank R. Lautenberg
Domestic Violence Gun Ban Bill
Press Conference
March 20, 1996**

Thank you for coming.

Congressman Torricelli and I are here to announce our plans to introduce legislation that would establish a policy of zero tolerance when it comes to guns and domestic violence.

To me, it's a simple proposition. Those guilty of domestic violence should not be permitted to pack a gun.

Our bill would make it a Federal crime for any person who has been convicted of domestic violence to possess a firearm.

Let me take a minute to explain why the bill is needed.

Under current Federal law, it is illegal for persons convicted of felonies to possess firearms.

Yet many people who engage in spousal or child abuse ultimately are not charged with or convicted of felonies

In many places, even today, these outrageous acts are not taken as seriously as other forms of brutal behavior. In fact, not one of the 50 states currently bans the possession of a gun by those convicted of domestic violence crimes classified as a misdemeanor.

Just two years ago, a Baltimore County Judge was hearing a case involving a man who shot his wife in the head. The Judge handed down a sentence that ultimately

came down to work release, and some community service. In commenting on the case, the judge remarked that he found it tough to sentence "non-criminals as criminals," as if shooting one's wife in the head doesn't qualify as a criminal act.

Even in my own state of New Jersey, where we have led the nation in enacting tough domestic violence laws, most domestic violence complaints are heard in municipal court, where they are considered disorderly persons offenses - that is, misdemeanors.

The fact is, at the end of the day, after a plea bargain or through a downgrading of the offense, spouse abusers very often are convicted of misdemeanors. These people are then still free under Federal law to possess a firearm.

In my view, that's a dangerous loophole. And our legislation would close it.

Our new bill will prohibit those convicted of any offense involving domestic violence from owning or possessing a firearm.

This would help to keep guns out of the hands of people who have shown themselves to be violent and a threat to those closest to them.

It also will send a message about our nation's commitment to ending domestic violence -- a message that we're serious about protecting women and children who suffer from abuse.

Unfortunately, abused women and children are the hidden victims in our society. Often they are afraid or ashamed, and unable or unwilling to leave a home that has become dangerous.

It is vital that we say to them, and to our society as a whole, that we will protect those victims of abuse. That we will care for them. And, just as importantly, that we

will prevent those who abuse them from ever doing so again.

Again, thanks to all of you for coming. I am especially grateful to Sarah Brady and Nancy Turner of the National Coalition Against Domestic Violence, for their long-standing commitment to these issues.

I'd also like to thank Congressman Torricelli for joining me in this effort. He has been active in the past in trying to protect victims of domestic violence, and I look forward to working with him to make the fight against domestic violence a top national priority.



New Jersey Citizens To Stop Gun Violence

176 West State Street • Trenton, NJ 08608-1190
(609) 396-7044

Steering Committee

Reverend Jack Johnson, Chairperson
Mr. Edward Borden, Esq.
Ms. Joan Diefenbach, Esq.
Mr. Jacob Locicero
Mr. David A. Matos, Jr.
Mr. Ed McBride, Jr., Esq.
Mrs. Dorothy McGann
Mr. Joseph M. Mecca, Esq.
Mr. Bryan Miller
Dr. Eric Munoz
Mr. Ted Rosenblatt
Ms. Ellen Saxon
Dr. Bartholomew Tortella

Press Release March 20, 1996

As Chairman of New Jersey Citizen's to Stop Gun Violence I am proud to stand here today in our nation's capital with two distinguished members of Congress who are elected representatives of the People of New Jersey.

Senator Lautenberg, Congressman Torricelli, we commend your efforts in taking another important step in seeking to curtail the deadly proliferation of violence caused by guns in our country. We know that fire arm statistics reported in this country draw a summary conclusion about the increased dangers of having a fire arm in one's home.'

The New England Journal of Medicine reported in a 1993 study that homes that have a gun are almost three times more likely to be the seen of a homicide than those without guns. We too know that approximately 50 percent of American homes contain one or more guns. When we look at these statistics and than discern that some persons who are convicted of domestic violence still have the right to purchase and own a gun we can see why these statistics are so high. Domestic violence is a national concern. A person convicted of domestic violence with a gun in his or her hand is a deadly concern.

We believe your efforts this day to eliminate what might be perceived as a loop hole in the law will be one more step in passing effective and sane gun control laws.

We continue to be indebted to your leadership in addressing a critical issue that faces our society, the proliferation of gun violence. We believe this proposed legislation will in fact reduce the number of fatalities that grow out of domestic violence disputes.



■ UNITED STATES SENATOR ■

Frank Lautenberg

NEW JERSEY

For Immediate Release
March 20, 1996

For Further Information
Bill Wise (202) 224-5885

LAUTENBERG, TORRICELLI INTRODUCE BILLS TO PROHIBIT THOSE CONVICTED OF DOMESTIC VIOLENCE FROM POSSESSING FIREARMS

WASHINGTON, D.C.--Calling for a policy of "zero tolerance when it comes to guns and domestic violence," Senator Frank R. Lautenberg (D-NJ) and Representative Robert G. Torricelli (D-NJ 9th Dist.) today introduced legislation in the Senate and House today to prohibit those convicted of any offense involving domestic violence from owning or possessing a firearm.

Lautenberg and Torricelli announced the introduction of the legislation at a news conference with Sarah Brady, chairperson of Handgun Control, Inc.; the National Coalition Against Domestic Violence, and New Jersey Citizens To Stop Gun Violence.

"To me, it's a simple proposition," Lautenberg declared. "Those guilty of domestic violence should not be permitted to pack a gun. Our bill would make it a federal crime for any person who has been convicted of domestic violence to possess a firearm."

Lautenberg pointed out that under current federal law, it is illegal for persons convicted of felonies to possess firearms. Yet, many people who engage in spousal or child abuse ultimately are not charged with or convicted of felonies.

"In many places, even today, these outrageous acts are not taken as seriously as other forms of brutal behavior," Lautenberg said. "In fact, not one of the 50 states currently bans the possession of a gun by those convicted of domestic violence crimes classified as a misdemeanor. The fact is, at the end of the day, after a plea bargain or through a downgrading of the offense, spouse abusers very often are convicted of misdemeanors. These people are then still free under federal law to possess a firearm. In my view, that's a dangerous loophole. And our legislation would close it."

Lautenberg said his legislation will prohibit those convicted of any offense involving domestic violence from owning or possessing a firearm.

"This would help to keep guns out of the hands of people who have shown themselves



Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

FAX COVER SHEET

TO:

Dennis Burke

FAX NO.

456-7028

FROM:

KEVIN AVERY

PHONE NO.

202/514-4117

DATE:

7/12/96

OF PAGES:

_____ (INCLUDING COVER)

COMMENTS:

Lautenberg w/ Comments

S.1632 As introduced in the Senate, March 21, 1996

II

104th CONGRESS
2d Session

S. 1632

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

IN THE SENATE OF THE UNITED STATES

March 21, 1996

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

A BILL

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

=====

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

SECTION 1. DEFINITIONS.

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

"(33) The term 'crime involving domestic violence' means a felony or
misdemeanor crime of violence, regardless of length, term, or manner of
punishment, 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 under the domestic or family violence laws of the jurisdiction in which such felony or misdemeanor was committed."

SEC. 2. UNLAWFUL ACTS.

Section 922 of title 18, United States Code, is amended--

(1) in subsection (d)--

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

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

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

"(9) is under indictment for, or has been convicted in any court of, any crime involving domestic violence."; and

(2) in subsection (g)--

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

(B) in paragraph (8), by striking the comma and inserting "; or"; and

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

"(9) who is under indictment for, or has been convicted in any court, of any crime involving domestic violence,".

SEC. 3. RULES AND REGULATIONS.

Section 926(a) of title 18, United States Code, is amended--

(1) by striking "and" at the end of paragraph (2);

(2) by striking the period at the end of paragraph (3) and inserting "; and"; and

(3) by inserting after paragraph (3) the following new paragraph:

"(4) regulations providing for the effective receipt and secure storage of firearms relinquished by or seized from persons described in subsection (d)(9) or (g)(9) of section 922."

SEC. 4. RESTORATION OF CIVIL RIGHTS AFTER CONVICTION.

Section 921(a)(20) of title 18, United States Code, is amended by striking the period at the end and inserting the following: ", or such restoration of civil rights occurs following conviction of a crime of domestic violence (as defined in section 921(a)(33)). A conviction of a crime of domestic violence shall not be considered to be a conviction for purposes of this chapter if the conviction is reversed or set aside based on a determination that the conviction is invalid, or if the person has been pardoned, unless the authority that grants the pardon expressly states that the person may not ship, transport, possess, or receive firearms."

SEC. 5. ADMINISTRATIVE RELIEF FROM CERTAIN FIREARM PROHIBITIONS.

(a) In General.--Section 925(c) of title 18, United States Code, is amended--

(1) in the first undesignated sentence, by inserting "(other than a person convicted of a crime of domestic violence as defined in section 921(a)(33))" before "who is prohibited"; and

(2) in the fourth undesignated sentence--

(A) by inserting "person (other than a person convicted of a crime of domestic violence as defined in section 921(a)(33)) who is a" before "licensed importer"; and

(B) by striking "his" and inserting "the person's".

(b) Applicability.--The amendments made by subsection (a) shall apply to--

(1) applications for administrative relief and actions for judicial review that are pending on the date of enactment of this Act; and

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

Domestic Violence Offender Gun Ban

QUESTION: I have introduced legislation which would prohibit any individual convicted of any crime involving an act of domestic violence from owning or possessing a gun. As you are aware, under current Federal law, it is illegal for persons convicted of felonies to possess a firearm. Yet, many people who engage in spousal or child abuse are

not ultimately charged with or convicted of a felony. The fact is, at the end of the day, perhaps as a result of a plea bargain or through a downgrading of the offense, spouse and child abusers are very often convicted of misdemeanors. These people are then still free under Federal law to possess a firearm. In my view, that is a dangerous loophole, and this legislation would close it. Does the Department of Justice support this approach, or have a position or opinion regarding this proposal?

ANSWER: S. 1632, the "Domestic Violence Offender Gun Ban", addresses a problem which we agree has become increasingly troublesome, i.e., the possession of firearms by individuals who have demonstrated that they are prone toward committing violent acts upon individuals with whom they have a close relationship. Unfortunately, on a daily basis we hear about individuals who have been in long term violent relationship suddenly grabbing a gun and killing someone. S. 1632 will help keep guns out of that volatile situation.

We do have some concerns with the bill as presently drafted. In Section 1, "crime involving domestic violence" is defined in part as a "felony or misdemeanor crime of violence" but those terms are left undefined. As a result it is unclear whether offenses which are often symptoms of domestic abuse, such as trespassing (or unlawful entry), harassing phone calls, threats, or misdemeanor breaking and entering, would be included. Later in Section 1, a list of relationships between the parties is given, but the relationship of two people cohabitating but not as a spouse is omitted. While we recognize that the definition included in the bill has been used in other sections of this Title, we have recently experienced difficulty in a prosecution due to the omission of this type of relationship.

In Section 2 the proposed amendment to Section 922 proposes adding a new subsection which would state "(9) is under indictment for, or has been convicted in any court of, any crime involving domestic violence." This should be changed to state "is presently facing charges for, or has been convicted in any court of, any crime involving domestic violence." Leaving the language as "under indictment" would eliminate almost all misdemeanor offenses since they are usually charged by complaint, information or some other charging document as well as some felony cases where the prosecution has proceeded by way of a preliminary hearing and information or where an indictment has not yet been filed. (This same alternative language should be substituted in Section 2(2) of S. 1632.)

With regard to Sections 3 and 4 of S. 1632, the Administration has this year submitted the "Enhanced Prosecution and Punishment of Armed Dangerous Felons Act of 1996". Section 2 of that act states,

Section 921(a)(20) of title 18, United States Code, is amended by adding at the end the following: "Notwithstanding the previous sentence, if

the conviction was for a violent felony or a serious drug offense (as defined in section 924(e)(2)(A) and (B)), the person shall be considered convicted for purposes of this chapter irrespective of any pardon, setting aside, expunction or restoration of civil rights."

We believe that individuals convicted of a "crime involving domestic violence" should be included in that provision.

to be violent and a threat to those closest to them," Lautenberg explained. "It also will send a message about our nation's commitment to ending domestic violence--a message that we're serious about protecting women and children who suffer abuse."

Lautenberg said abused women and children are the hidden victims in our society. Often, he said, they are afraid or ashamed, and unable or unwilling to leave a home that has become dangerous.

"It is vital that we say to them, and to our society as a whole, that we will protect those victims of abuse," Lautenberg declared. "That we will care for them. And, just as importantly, that we will prevent those who abuse them from ever doing so again."

###

Amends 18 USC 922 (d) + (g)
2 by Adding 9th Prohibiting
Category

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

9 SEC. 2. UNLAWFUL ACTS.

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

12 (1) in subsection (d)—

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

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

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

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

22 (2) in subsection (g)—

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

3

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

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

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

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

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

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

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

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

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

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

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

5

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

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

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

○

HANDGUN CONTROL

ONE MILLION STRONG . . . working to
keep handguns out of the wrong hands.

**STATEMENT OF SARAH BRADY, CHAIR
HANDGUN CONTROL, INC.**

March 20, 1996

Hello, I'm Sarah Brady. As Chair of Handgun Control, Inc. I am here today to wholeheartedly endorse legislation authored by Senator Lautenberg and Congressman Torricelli, which would prohibit persons who have been convicted of domestic abuse from possessing firearms.

Between two to four million incidents of domestic violence occur each year — of them, an estimated 150,000 involve a gun. The New England Journal of Medicine reported in 1993 that if there is a gun present in the home, a woman who has been physically abused in a previous family fight is almost five times more likely to be murdered or involved in a fatal shooting.

And we now know that more than twice as many American women are shot and killed by their husbands or lovers than by strangers. Clearly, the gun violence epidemic is creeping into our homes at an alarming rate.

Despite the prevalence of domestic violence, most convicted domestic abusers can walk into a gun shop and legally purchase a firearm. This is a disaster waiting to happen — for all too often the only difference between a battered woman and a dead woman is a gun in the home.

The 1994 Crime Bill took a critical first step in prohibiting persons under domestic violence restraining orders from purchasing firearms. It's been nearly two years now since the Crime Bill was enacted and we're seeing some important results from this new law.

In Kentucky, for example, the State Police stopped 323 persons under restraining orders from purchasing guns, and the Colorado Department of Public Safety denied another 72 such individuals. That's a significant number of lives protected — but we can do even more.

What the 1994 Crime Bill unfortunately did not do was prevent domestic abusers from obtaining a firearm after an actual conviction. And since in many states, acts of domestic violence are prosecuted as misdemeanors or plea-bargained down from a felony to a misdemeanor, there is often no federal bar to acquiring a firearm.

The Lautenberg/Torricelli bill would ensure that persons convicted of domestic violence can no longer purchase a firearm. It would expand the reach of the Brady Law, which has already proven effective in stopping the retail sale of guns to convicted criminals.

And thereby, provide much needed protection to countless victims of domestic violence from the deadly force of firearms.

I commend Senator Lautenberg and Congressman Torricelli for their outstanding leadership in protecting America's women and children and urge congressional support for this critical public safety measure.

> 12

1 of 1 items

CQ's WASHINGTON ALERT 06/26/96

*** HISTORY REPORT -- ALL LEGISLATIVE ACTION, COSPONSORS, SPEECHES ***

MEASURE: S1632

SPONSOR: Lautenberg (D-NJ)

OFFICIAL TITLE: A bill to prohibit persons convicted of a crime involving domestic violence from owning or possessing firearms, and for other purposes.

INTRODUCED: 03/21/96

COSPONSORS: 7 (Dems: 7 Reps: 0 Ind: 0)

COMMITTEES: Senate Judiciary

RELATED BILLS: See HR3455

LEGISLATIVE ACTION:

03/21/96 Referred to Committee on the Judiciary (Text of bill appears on pgs. S2646-S2647 of the March 21, 1996, Congressional Record) (CR p. S2646)

03/21/96 LAUTENBERG, D-N.J., Senate speech: Introduces legislation to prohibit persons convicted of a crime involving domestic violence from owning or possessing firearms. (Text of bill) (CR p. S2646-S2647)

05/14/96 *** Related measure (HR3455) introduced in House. ***

06/03/96 Cosponsor(s) added: 3
Kennedy, E. (D-MA) Kohl (D-WI) Murray (D-WA)

06/07/96 Cosponsor(s) added: 1
Simon (D-IL)

06/14/96 Cosponsor(s) added: 2
Akaka (D-HI) Inouye (D-HI)

06/18/96 Cosponsor(s) added: 1
Feinstein (D-CA)

There are no more items to display.

Results: 1 items in BILLTRACK

Search criteria used:

BILL:S1632

Results are: Not sorted

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STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS (Senate - March 21, 1996)

[Page: S2646]

By Mr. LAUTENBERG :

S. 1632. A bill to prohibit persons convicted of a crime involving **domestic violence** from owning or possessing firearms, and for other purposes; to the Committee on the Judiciary.

FIREARMS LEGISLATION

☐ [Begin insert]

Mr. LAUTENBERG . Mr. President, today I am introducing legislation that would prohibit individuals who have been convicted of a crime involving **domestic violence** from owning or possessing firearms.

Under current Federal law, Mr. President, it is illegal for people convicted of felonies to possess firearms. Yet many people who engage in serious spousal or child abuse ultimately are not charged with or convicted of felonies. At the end of the day, maybe following a plea bargain, they are convicted of misdemeanors. And these people are still free under Federal law to possess firearms.

This legislation will close this loophole, and will help keep guns out of the hands of people who have proven themselves to be violent and a threat to those closest to them. The legislation would add to the list of persons disqualified from owning or possessing a firearm individuals who have been convicted of any crime involving **domestic violence** , regardless of the length, term, or manner of punishment. This includes violent crimes committed by a spouse, former spouse, paramour, parent, guardian or similar individual.

Mr. President, although there is a growing awareness about the problem of **domestic violence** , in many places, even today, these outrageous acts are not taken as seriously as other forms of brutal behavior. Yet each year an estimated 2 million women are victimized by **domestic violence** . That is 10 times the number of women who are diagnosed with breast cancer. Of those 2 million women, nearly 6,000 die at the hands of men who at least at one time claimed to love them. About 70 percent of the time, those hands are holding a gun.

Mr. President, much of the killing and maiming associated with **domestic violence** could not happen but for the presence of a firearm. The New England Journal of Medicine reports that in households with a history of battering, a gun in the home increases the likelihood that a woman will be murdered fivefold. Often, the only difference between a battered woman and a dead woman is the presence of a gun.

Acts of **domestic violence** , by their nature, are especially dangerous and require special attention. These crimes involve people who have a history together, and who perhaps share a home or a child. These are not violent acts between strangers, and they do not arise from a chance meeting. Even after a split, the individuals involved often by necessity have a continuing relationship of some sort. The husbands, boyfriends, and former husbands who commit these crimes often have a record of violent and threatening behavior. And yet, frequently, these men are being permitted to possess firearms--with no legal restrictions.

The statistics and data are clear. **Domestic violence** , no matter how it is labeled, leads to more **domestic violence** . And guns in the hand of convicted spouse abusers lead to death.

To me, Mr. President, it is a simple proposition. Those guilty of acts of **domestic violence** should not be trusted to acquire

or possess a gun. Period.

Mr. President, this legislation would save the lives of many innocent Americans. But it also would send a message about our Nation's commitment to ending **domestic violence** , and about our determination to protect the millions of women and children who suffer from this abuse.

I hope my colleagues will support the bill, and ask unanimous consent that a copy of the legislation be printed in the **Record**.

There being no objection, the bill was ordered to be printed in the **Record**, as follows:

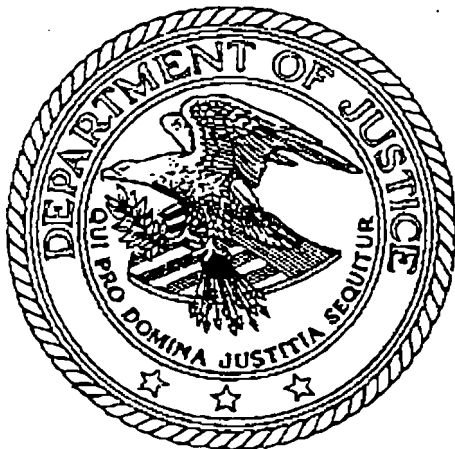
[Page: S2647]

S. 1632

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

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U.S. Department of Justice



Washington, D.C. 20530

ELIZABETH HYMAN
Chief of Staff
Violence Against Women
Office
(202) 616-2845 (OFFICE)
(202) 307-3904 (FAX)

DATE: 7/9/96TO: Dennis Burke456-7028FAX #: 456-5568

PHONE #: _____

OF PAGES: 6 (INCLUDING COVER)COMMENTS: _____

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QUESTIONS SUBMITTED BY SENATOR LAUTENBERG

Legislation to Hold Firearms Dealers Liable

QUESTION: As you know, Madam Attorney General, I have introduced legislation that would hold firearms dealers liable to injured third parties if the dealer sells a firearm to a felon or juvenile, who then uses the firearm to physically harm the innocent third party. The purpose of this legislation is to help keep guns out of the wrong hands, and to provide compensation for injured innocent third parties. Please review this legislation proposal and provide the Department's position.

ANSWER: We are extremely sympathetic to the purpose of "The Gun Victim Compensation Act", S. 2443 (introduced in the 103rd Congress), which is to provide victims of firearms offenses an additional forum for suits against individuals who unlawfully transfer the offending weapons to prohibited persons. As recognized by your bill, sections 922(d), 922(b)(1) and 922(x) of title 18 already make it a federal criminal offense to transfer these weapons to certain classes of individuals, and we note that it would appear, based on decisions from several state Courts of Appeals, that in many jurisdictions a person injured by a weapon that had been illegally transferred presently have a cause of action against the transferor in state court. Congress should consider whether this proposal would provide additional rights to victims, or would only give a victim a choice of courts.

In addition to the above considerations, we have some suggested refinements to S. 2443 resulting in large part from the changes in the federal firearms statutes since you first introduced this legislation in the previous Congress.

As presently drafted, Section 2 of the bill creates a new subsection "(j)" to Section 924 of Title 18, United States Code. This should be changed to "(o)" since subsections (j) through (n) already exist.

The first full sentence of Section 2 of S. 2443 creates a cause of action based upon a violation of two criminal sections of Title 18 and the sale, delivery or transfer of "a handgun to a person who the transferor knows or has reasonable cause to believe is a juvenile, except as provided in paragraph (6)". Since S. 2443 was introduced, the "Violent Crime Control and Law Enforcement Act of 1994" has become law. That statute included a new Youth Handgun Safety Act (18 U.S.C. Section 922(x) which made it a criminal offense to sell transfer or deliver a handgun or ammunition to a juvenile with certain exceptions which mirrored the exceptions in paragraph (6) of S. 2443. As a result of the enactment of this new section S. 2443 can be redrafted to state,

"(1) IN GENERAL.--Any person who sells,

delivers, or otherwise transfers-- "(A) a firearm in violation of sections 922(d) or 922(b)(1) or "(B) a handgun in violation of 922(x) shall be liable for damages caused by a discharge of the transferred firearm by the transferee."

In addition, since all of the exceptions included in proposed subsection (6) are included as exceptions in 18 U.S.C. Section 922(x) (A)-(C) that portion of the bill can be deleted as duplicitious.

Motor Vehicle Theft Prevention Program

QUESTION: In 1994 I authored the Motor Vehicle Theft Prevention Act, which was included in that year's Anti-Crime Act. This law establishes a national auto theft prevention program. The process is simple: Participating car owners attach a decal that states that the car owner authorizes law enforcement officers to stop the individual driving the car at certain hours of the day (late night through early morning hours) for questioning regarding that individual's use of the car.

Under a similar program in New York City, vehicles without decals were about 60 times more likely to be stolen than those with this simple decal. It is my understanding that proposed regulations that would implement this program have been published, but I have not heard anything further on this in several months. Please provide an update on the implementation of the Motor Vehicle Theft Prevention Act.

ANSWER: The Motor Vehicle Theft Prevention Program is a new program authorized by the Violent Crime Control and Law Enforcement Act of 1994. On October 24, 1995, the Department published the proposed rule in the Federal Register for comment. Since then, the program has been delegated to the Office of Justice Programs (OJP) for administration. OJP has received all comments and is modifying the rule to address the concerns and issues raised during the review process.

OJP expects to have a finalized rule by July 1996. Afterward, it is anticipated that a single state agency or public interest group will be selected to administer a demonstration project to test the program for replication on a national basis.

This program received \$500,000 in FY 1996, and has requested \$1,000,000 in FY 1997.

Domestic Violence Offender Gun Ban

QUESTION: I have introduced legislation which would prohibit any individual convicted of any crime involving an act of domestic violence from owning or possessing a gun. As you are aware, under current Federal law, it is illegal for persons convicted of felonies to possess a firearm. Yet, many people who engage in spousal or child abuse are

not ultimately charged with or convicted of a felony. The fact is, at the end of the day, perhaps as a result of a plea bargain or through a downgrading of the offense, spouse and child abusers are very often convicted of misdemeanors. These people are then still free under Federal law to possess a firearm. In my view, that is a dangerous loophole, and this legislation would close it. Does the Department of Justice support this approach, or have a position or opinion regarding this proposal?

ANSWER: S. 1632, the "Domestic Violence Offender Gun Ban", addresses a problem which we agree has become increasingly troublesome, i.e., the possession of firearms by individuals who have demonstrated that they are prone toward committing violent acts upon individuals with whom they have a close relationship. Unfortunately, on a daily basis we hear about individuals who have been in long term violent relationship suddenly grabbing a gun and killing someone. S. 1632 will help keep guns out of that volatile situation.

We do have some concerns with the bill as presently drafted. In Section 1, "crime involving domestic violence" is defined in part as a "felony or misdemeanor crime of violence" but those terms are left undefined. As a result it is unclear whether offenses which are often symptoms of domestic abuse, such as trespassing (or unlawful entry), harassing phone calls, threats, or misdemeanor breaking and entering, would be included. Later in Section 1, a list of relationships between the parties is given, but the relationship of two people cohabitating but not as a spouse is omitted. While we recognize that the definition included in the bill has been used in other sections of this Title, we have recently experienced difficulty in a prosecution due to the omission of this type of relationship.

In Section 2 the proposed amendment to Section 922 proposes adding a new subsection which would state "(9) is under indictment for, or has been convicted in any court of, any crime involving domestic violence." This should be changed to state "is presently facing charges for, or has been convicted in any court of, any crime involving domestic violence." Leaving the language as "under indictment" would eliminate almost all misdemeanor offenses since they are usually charged by complaint, information or some other charging document as well as some felony cases where the prosecution has proceeded by way of a preliminary hearing and information or where an indictment has not yet been filed. (This same alternative language should be substituted in Section 2(2) of S. 1632.)

With regard to Sections 3 and 4 of S. 1632, the Administration has this year submitted the "Enhanced Prosecution and Punishment of Armed Dangerous Felons Act of 1996". Section 2 of that act states,

Section 921(a)(20) of title 18, United States

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the conviction was for a violent felony or a serious drug offense (as defined in section 924(e)(2)(A) and (B)), the person shall be considered convicted for purposes of this chapter irrespective of any pardon, setting aside, expunction or restoration of civil rights."

We believe that individuals convicted of a "crime involving domestic violence" should be included in that provision.

Anti-Gun Trafficking Act

QUESTION: Senator Simon and I have introduced the Anti-Gun Trafficking Act, which would amend the Federal criminal code to prohibit any licensed firearms importer, manufacturer, or dealer from transferring two or more handguns to an unlicensed individual during any 30-day period, or a handgun to an unlicensed individual who received a handgun during the 30-day period ending on the date of the transfer. Basically, this "one-gun-a-month" proposal is designed to reduce interstate gun trafficking by prohibiting bulk purchases of handguns. As you know, many criminals purchase large quantities of guns in states with weak firearm laws, and then transport these guns to states with tougher laws.

In response to this problem, Virginia enacted a one-gun-per-month limit. Since the enactment of this statute, there has been a 65% reduction in the likelihood that a gun traced back to the Southeast from the Northeast corridor can be traced back to Virginia. This law has been so effective that Maryland is also about to enact its own one-gun-per-month law. However, many law enforcement officials now fear that criminal gun runners will turn to other states with more lax firearms laws for their supply of guns.

In light of this, we have introduced a national one-gun-per-month bill. Does the Department have a position on this legislation, or on the concept of a national one-gun-per-month law?

ANSWER: S. 1113, the "Anti-Gun Trafficking Act of 1995", amends section 922 of title 18 to make it illegal for an individual to purchase more than one firearm during any 30-day period and also makes it illegal for any licensed dealer to transfer to an individual more than one firearm during any 30-day period. This idea of limiting the number of firearms purchases was first enacted in the Commonwealth of Virginia and more recently in the State of Maryland in an attempt to reduce the number of "straw purchases", which is one of the ways criminals obtain weapons. We have seen encouraging results from the Virginia limitations.

We continue to examine this and other proposals designed to reduce gun violence in our communities. As you know, the problem of violence especially in conjunction with firearms has become an increasing concern of the public and has been

the focus of the Department's efforts since 1993. The Department has been aggressively prosecuting armed, violent

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criminals and moving toward full implementation of the National Instant Criminal Background Check System. Not only have we fought to curb crime through aggressive prosecution, we have sought to keep guns out of the hands of criminals on the front end, to prevent the crimes from occurring. The Administration has done so through reasonable regulation of firearms, including the Brady Act and the assault weapons ban. These measures, along with legislation to amend the Gun Free Schools Act, 18 U.S.C. Section 924(c) and the appropriation of the remaining NCHIP funds authorized under the Brady Act of 1994, are sorely needed.

4 pages follow

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

3052643
Ellen

ROUTE SLIP

TO: Treasury / Tom Mc Givern

David Fein

Dennis Burke

Take necessary action ☐

Approval signature ☐

Comment ☐

Prepare reply ☐

Discuss with me ☐

For your information ☐

See remarks below ☐

FROM: ³⁹⁵⁻ Jim Jukes (x5-3458)

DATE: 9-24-96 -- 5:15 pm

REMARKS

The attached statutory language has been described to me as a "compromise" that is under consideration in the context (I think) of the continuing resolution.

I have been asked to advise ASAP if there are any objections to it. I understand that Justice (OLA/Ellen Davis) is OK with it. Please advise by 6:00 of any objections. Thanks.

To: Ellen
DAVIS

3052643

4 sec. 658.

(1512)

(a) DEFINITION.—Section 921(a) of title 18, United
5 States Code, is amended by adding at the end the follow-
6 ing:

7 “(33)(A) Except as provided in subparagraph (O);
8 the term ‘misdemeanor crime of domestic violence’ means
9 an offense that—

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

12 “(ii) has, as an element, the use or attempted
13 use of physical force, or the threatened use of a
14 deadly weapon, against an intimate partner of the
15 offender.

16 “(B) For purposes of this chapter, what constitutes
17 a conviction of such an offense shall, subject to subpara-
18 graph (O), be determined in accordance with the law of
19 the jurisdiction in which the proceedings were held.

151b

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

4 “(I) at the time the person was notified of the
5 complaint or charged with the offense, the person
6 was notified that, if the person were convicted of the
7 offense, the person would be prohibited from ship-
8 ping, transporting, possessing, or receiving a fire-
9 arm;

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

13 “(III) the case was tried by a jury, or the per-
14 son knowingly and intelligently waived the right to
15 have the case tried by a jury.

16 “(II) A person shall not be considered to have been
17 convicted of such an offense for purposes of this chapter
18 if the conviction has been expunged or set aside, or is an
19 offense for which the person has been pardoned or has
20 had civil rights restored, unless the pardon, expungement,
21 or restoration of civil rights expressly provides that the
22 person may not ship, transport, possess, or receive fire-
23 arms.”.

24 (b) PROHIBITIONS.—

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

(151c)

1 (A) by striking "or" at the end of para-
2 graph (7);

3 (B) by striking the period at the end of
4 paragraph (8) and inserting "; or"; and

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

7 "(9) has been convicted in any court of a mis-
8 demeanor crime of domestic violence."

9 (8) Section 922(g) of such title is amended—

10 (A) by striking "or" at the end of para-
11 graph (7);

12 (B) by striking the comma at the end of
13 paragraph (8) and inserting "; or"; and

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

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

18 (3) Section 922(e)(3)(B)(i) of such title is
19 amended by inserting ", and has not been convicted
20 in any court of a misdemeanor crime of domestic vi-
21 olence" before the semicolon.

22 (d) GOVERNMENT ENTITIES NOT EXCEPTED.—Sec-
23 tion 925(a)(1) of such title is amended by inserting "sec-
24 tions 922(d)(9) and 922(g)(9) and" after "except for".

(51d)

- 1 (e) RULES AND REGULATIONS—Section 926(a)(3) of
- 2 such title is amended by striking “(d)(8) or (g)(8)” and
- 3 inserting “(d)(8), (d)(9), (e)(8), or (g)(9)”.

(3) by adding after subparagraph (B) the following:

"(C) a Trustee may serve after the expiration of the Trustee's term until a successor has been chosen."

SEC. 656. Notwithstanding any other provision of law, the Secretary of the Interior, through the Bureau of Indian Affairs, may directly transfer to Indian tribes in North and South Dakota portable housing units at the Grand Forks Air Force base in North Dakota which have been declared excess by the Department of Defense and requested for transfer by the Department of the Interior.

SEC. 657. Section 922(q) of title 18, United States Code, is amended to read as follows:

"(q)(1) The Congress finds and declares that—

"(A) crime, particularly crime involving drugs and guns, is a pervasive, nationwide problem;

"(B) crime at the local level is exacerbated by the interstate movement of drugs, guns, and criminal gangs;

"(C) firearms and ammunition move easily in interstate commerce and have been found in increasing numbers in and around schools, as documented in numerous hearings in both the Committee on the Judiciary the House of Representatives and the Committee on the Judiciary of the Senate;

"(D) in fact, even before the sale of a firearm, the gun, its component parts, ammunition, and the raw materials from which they are made have considerably moved in interstate commerce;

"(E) while criminals freely move from State to State, ordinary citizens and foreign visitors may fear to travel to or through certain parts of the country due to concern about violent crime and gun violence, and parents may decline to send their children to school for the same reason;

"(F) the occurrence of violent crime in school zones has resulted in a decline in the quality of education in our country;

"(G) this decline in the quality of education has an adverse impact on interstate commerce and the foreign commerce of the United States;

"(H) States, localities, and school systems find it almost impossible to handle gun-related crime by themselves—even States, localities, and school systems that have made strong efforts to prevent, detect, and punish gun-related crime find their efforts unavailing due in part to the failure or inability of other States or localities to take strong measures; and

"(I) the Congress has the power, under the interstate commerce clause and other provisions of the Constitution, to enact measures to ensure the integrity and safety of the Nation's schools by enactment of this subsection.

"(2)(A) It shall be unlawful for any individual knowingly to possess a firearm that has moved in or that otherwise affects interstate or foreign commerce at a place that the individual knows, or has reasonable cause to believe, is a school zone.

"(B) Subparagraph (A) does not apply to the possession of a firearm—

"(i) on private property not part of school grounds;

"(ii) if the individual possessing the firearm is licensed to do so by the State in which the school zone is located or a political subdivision of the State, and the law of the State or political subdivision requires that, before an individual obtains such a license, the law enforcement authorities of the State or political subdivision verify that the individual is qualified under law to receive the license;

"(iii) that is—

"(I) not loaded; and

"(II) in a locked container, or a locked firearms rack that is on a motor vehicle;

"(iv) by an individual for use in a program approved by a school in the school zone;

"(v) by an individual in accordance with a contract entered into between a school in the school zone and the individual or an employer of the individual;

"(vi) by a law enforcement officer acting in his or her official capacity; or

"(vii) that is unloaded and is possessed by an individual while traversing school premises for the purpose of gaining access to public or private lands open to hunting, if the entry on school premises is authorized by school authorities.

"(3)(A) Except as provided in subparagraph (B), it shall be unlawful for any person, knowingly or with reckless disregard for the safety of another, to discharge or attempt to discharge a firearm that has moved in or that otherwise affects interstate or foreign commerce at a place that the person knows is a school zone.

"(B) Subparagraph (A) does not apply to the discharge of a firearm—

"(i) on private property not part of school grounds;

"(ii) as part of a program approved by a school in the school zone, by an individual who is participating in the program;

"(iii) by an individual in accordance with a contract entered into between a school in a school zone and the individual or an employer of the individual; or

"(iv) by a law enforcement officer acting in his or her official capacity.

"(4) Nothing in this subsection shall be construed as preempting or preventing a State or local government from enacting a statute establishing gun free school zones as provided in this subsection."

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

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

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

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

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

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

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

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

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

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

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

(b) PROHIBITIONS.—

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 659. THRIFT SAVINGS PLAN.

TITLE I—ADDITIONAL INVESTMENT FUNDS FOR THE THRIFT SAVINGS PLAN

SEC. 101. SHORT TITLE

This title may be cited as the "Thrift Savings Investment Funds Act of 1996".

SEC. 102. ADDITIONAL INVESTMENT FUNDS FOR THE THRIFT SAVINGS PLAN

Section 8438 of title 5, United States Code, is amended—

(1) in subsection (a)—

(A) by redesignating paragraphs (5) through (8) as paragraphs (6) through (9), respectively;

(B) by inserting after paragraph (4) the following new paragraph:

"(5) the term 'International Stock Index Investment Fund' means the International Stock Index Investment Fund established under subsection (b)(1)(E);"

(C) in paragraph (8) (as redesignated by subparagraph (A) of this paragraph) by striking out "and" at the end thereof;

(D) in paragraph (9) (as redesignated by subparagraph (A) of this paragraph)—

(i) by striking out "paragraph (7)(D)" in each place it appears and inserting in each such place "paragraph (8)(D)"; and

(ii) by striking out the period and inserting in lieu thereof a semicolon and "and"; and

(E) by adding at the end thereof the following new paragraph:

"(10) the term 'Small Capitalization Stock Index Investment Fund' means the Small Capitalization Stock Index Investment Fund established under subsection (b)(1)(D);" and

(F) in subsection (b)—

(A) in paragraph (1)—

(i) in subparagraph (B) by striking out "and" at the end thereof;

(ii) in subparagraph (C) by striking out the period and inserting in lieu thereof a semicolon; and

(iii) by adding at the end thereof the following new subparagraphs:

"(D) a Small Capitalization Stock Index Investment Fund as provided in paragraph (3); and

"(E) an International Stock Index Investment Fund as provided in paragraph (4)."; and

(B) by adding at the end thereof the following new paragraphs:

"(3)(A) The Board shall select an index which is a commonly recognized index comprised of common stock the aggregate market value of which represents the United States equity markets excluding the common stocks included in the Common Stock Index Investment Fund.

"(B) The Small Capitalization Stock Index Investment Fund shall be invested in a portfolio designed to replicate the performance of the index in subparagraph (A). The portfolio shall be designed such that, to the extent practicable, the percentage of the Small Capitalization Stock Index Investment Fund that is invested in each stock is the same as the percentage determined by dividing the aggregate market value of all shares of that stock by the aggregate market value of all shares of all stocks included in such index.

"(4)(A) The Board shall select an index which is a commonly recognized index comprised of

Date: 09/16/96 Time: 08:32

GGingrich Would Bar Gun Ownership In Domestic Violence Cases

WASHINGTON (AP) The House will pass legislation to ban handgun ownership for anyone convicted of any crime related to domestic violence, House Speaker Newt Gingrich says.

"I'm very much in favor of stopping people who engage in violence against their spouses from having guns," the Georgia Republican said Sunday on NBC's "Meet the Press." "I think that's a very reasonable position."

Gingrich, who has supported a repeal of the assault-weapons ban and generally opposes gun control, said he thought such legislation would pass the House before it begins its election-year adjournment in early October.

President Clinton has advocated the handgun ban for those convicted of domestic violence, and on Friday four Democratic senators wrote GOP presidential nominee Bob Dole, asking him to sway Gingrich and other House Republicans on the issue.

"Without your direct intervention, it now seems unlikely that the Republican congressional leadership will protect battered wives and abused children from gun violence," wrote Sens. Frank Lautenberg of New Jersey, Barbara Boxer of California, Christopher Dodd of Connecticut and John Kerry of Massachusetts.

They said Dole was "in a unique position to persuade Speaker Gingrich" to approve the gun ban.

"Bob Dole believes all guns, not just handguns, should be kept out of the hands of domestic abusers," said Dole campaign spokeswoman Christina Martin. "That's why the Dole instant-check initiative would protect anyone under a court order for stalking or harassing their spouse from purchasing any gun rifle, shotgun or handgun."

Lautenberg has been the leader of Senate efforts to enact the ban. He originally tried to attach it to anti-stalking legislation passed last week that would make it a crime to cross state lines to harass someone.

When that failed, he proposed it as an amendment to a spending bill for the Treasury Department and several other federal agencies that the Senate debated last week. Lautenberg's amendment passed 97-2, but the Republican leadership pulled the spending bill from the Senate floor because of lack of progress on it.

APNP-09-16-96 0842EDT

THE WHITE HOUSE

WASHINGTON

September 17, 1996

The Honorable Newt Gingrich
Speaker of the
House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

I am pleased that you have now joined me in supporting legislation to prohibit domestic violence offenders from obtaining firearms. No one who has committed an act of domestic violence against a spouse or child should be able to possess a firearm.

As you know, Senator Lautenberg and Representative Torricelli have introduced legislation that would achieve this objective. The Senate passed the Lautenberg bill for the second time last week by an overwhelming and bipartisan vote of 97-2. It is now time for the House to act on the Torricelli bill and join the Senate in supporting this bipartisan effort.

There were 88,500 incidents of domestic violence where a firearm was present in 1994. I signed the Brady Law in 1993 and to date it has prevented over 60,000 felons, fugitives and others from buying handguns. My 1994 Crime Bill included the historic Violence Against Women Act, which made it a crime for stalkers and harassers under restraining orders to carry a gun. That provision is beginning to take hold -- in Kentucky alone, over 300 stalkers and harassers were prohibited from buying firearms in one year. The legislation that you now support will build upon these important provisions.

I welcome your support and determination to complete this job. Protecting innocent women and children from deadly domestic violence is too important to let anything stand in the way. Bringing this bill to a vote in the House is an important step. But we must see it through to the end. Send it to me for my signature without further delay before Congress adjourns so that keeping guns out of the hands of all domestic violence offenders becomes the law of the land.

Sincerely,

Bill Clinton

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

18-Sep-1996 06:46pm

TO: Dennis Burke

FROM: Bruce N. Reed
 Domestic Policy Council

SUBJECT: Nice work...

Date: 09/18/96 Time: 17:28

CCClinton Urges Gingrich To Enact Domestic Violence Gun Ban Soon

WASHINGTON (AP) Taking House Speaker Newt Gingrich at his word, President Clinton urged the Republican leader Wednesday to allow a vote soon on a bill to keep guns out of the hands of people convicted of domestic violence.

In a letter to Gingrich, R-Ga., Clinton asked that the bill supported by many in both political parties be passed and sent for his signature before Congress adjourns next month.

``Protecting innocent women and children from deadly domestic violence is too important to let anything stand in the way,'' Clinton wrote.

Neither Gingrich nor his spokesman were immediately available for comment.

The speaker, who generally opposes gun control, promised Sunday that the House would pass the legislation, which would ban handgun ownership for anyone convicted of domestic violence offenses, either felonies or misdemeanors. The Senate approved the bill last week, 97-2.

``I'm very much in favor of stopping people who engage in violence against their spouses from having guns,'' Gingrich said on television. ``I think that's a very reasonable position.''

Clinton, who has advocated the ban on the campaign trail, praised Gingrich for supporting the bill. ``I am pleased that you have now joined me,'' he wrote.

He asked Gingrich to get the bill passed quickly in order to enhance other measures passed under the Clinton administration, including the Brady law and the Violence Against Women Act, which makes ownership of a handgun illegal for people under a judicial restraining order for stalking or harassment.

``Bringing this bill to a vote in the House is an important step. But we must see it through to the end,'' Clinton said. ``Send it to me for my signature without further delay ... so that keeping guns out of the hands of all domestic violence offenders becomes the law of the land.''

APNP-09-18-96 1738EDT

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WASHINGTON

September 17, 1996

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Sincerely,

Bill Clinton

THE WHITE HOUSE
Office of the Press Secretary

For Immediate Release

September 18, 1996

Attached is a letter from the President to Speaker Gingrich regarding legislation to prevent domestic violence offenders from obtaining firearms.

-30-30-30-

To: Dennis Burke
67028

SEP 18 05 17:32 FROM: UPPER PRESS OFFICE 2024366423 10:67028 PAGE:02

THE WHITE HOUSE

WASHINGTON

September 17, 1996

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Sincerely,

Bill Clinton

Date: 09/13/96 Time: 02:25

Senate Moves to Block Spouse Abusers From Having Guns (Washn)

By Elizabeth Shogren

(c) 1996, Los Angeles Times

WASHINGTON The Senate overwhelmingly approved legislation Thursday that would prohibit anyone convicted of a misdemeanor offense of domestic violence from possessing or purchasing a firearm.

The measure, which would substantially expand the existing Brady Law banning sale of handguns to felons, enjoys strong support from President Clinton but has been vigorously opposed by the National Rifle Association and other gun groups.

The legislation, which passed 97-2 as an amendment to an unrelated bill, now moves to a joint House-Senate conference committee, where its fate will be determined.

Tony Blankley, press secretary for House Speaker Newt Gingrich, R-Ga., said he believes, but is not certain, the House conferees will sign off on the legislation. A similar provision languished in the House earlier this year.

"Our homes should be places of security," said Sen. Frank Lautenberg, D-N.J., sponsor of the amendment. "Unfortunately, for many women and children who suffer in silence, home is a place of danger and death. There is no reason why wife beaters and child abusers should have guns."

An estimated 2 million to 4 million acts of domestic violence are committed each year nationally. And, according to the FBI, about 1,500 deaths a year are caused by these acts of violence 65 percent of them with guns, according to the FBI.

"All too often, the difference between a battered woman and a dead woman is a gun," said Sen. Paul Wellstone, D-Minn., a long-time advocate of the gun ban provision.

Reliable estimates of how many people would be denied firearms under the measure are not available. The FBI said it does not compile such data because record keeping on domestic violence charges differs greatly from state to state.

However, in most states, assault of a domestic partner or child is charged as a misdemeanor, unless it results in serious or permanent injury. Also, a large number of felony charges of domestic violence are reduced to misdemeanors during plea bargains.

(Begin optional trim)

Despite Clinton's endorsement and the overwhelming popularity of the gun ban measure in the Senate, House members could still prove an obstacle to its passage.

When the same amendment was attached to another bill earlier this year legislation aimed at deterring and punishing people who stalk and harass others the whole measure stalled in the House because of the gun lobby's opposition to the gun ban provision.

The amendment is now part of the Senate version of the Treasury-Postal Service Appropriations Bill. The House already has passed its version of that bill, so the decision of whether to include the domestic violence provision will be made when the two chambers meet to work out the differences of those measure in a conference committee.

"I can't imagine that we'd want to reject it," said Blankley, Gingrich's spokesman. "Our position for years has been is the best way to stop handgun violence is to outlaw people with criminal convictions from having handguns."

Wellstone, who sponsored a similar amendment during the last Congressional session only to see it greatly watered-down as a result

of pressure from the gun lobby, said he is more optimistic this time. ``I think it's going to be hard for them to knock this out,''

Wellstone said. ``This country's public opinion about issues dealing with domestic violence has dramatically changed, and people in politics have picked this up.''

Wellstone predicted the provision's chances will benefit from Republican efforts to appear sensitive to issues important to women, given polling data showing Democrats generally running ahead among women voters.

``Politicians are very focused on the ... gender gap,''

he said.

(End optional trim)

Officials with the National Rifle Association could not be reached for comment Thursday night on the Senate's action.

Advocates of tighter gun control laws applauded the Senate vote.

``It reflects a growing understanding that firearms play a significant role in domestic violence, that over years, repeated beatings can escalate into a tragic shooting,''

said Bob Walker, legislative director of the Center to Prevent Handgun Violence.

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