

The Gottlieb-Tartaro Report

THE INSIDERS GUIDE FOR GUN OWNERS

Issue 153

September, 2007

Dear Subscriber,

U.S. Forest Service personnel have been improperly using an obscure regulation to prohibit recreational shooting near forest roads. But a series of reports in **The New Gun Week** -- a publication owned by the Second Amendment Foundation -- has brought the problem to light and prompted the agency to issue a memorandum late last month correcting the error.

But it took the Forest Service two years of constant reminders from **Gun Week** to do the right thing.

Under the old interpretation, USFS rangers and law enforcement officers had been **preventing the public from recreational shooting within 150 yards of any road** on the presumption that a road is an "occupied area" under language in the Code of Federal Regulations (CFR) -- 36 CFR 261.10.

The problem was particularly bad in Colorado's Boulder Ranger District, an urban-influenced area of the Rocky Mountains where **anti-gun activists infest local environmental pressure groups**.

JOEL HOLTROP, deputy chief of the National Forest System, examined the issue brought to light by **Gun Week** and wrote a memorandum clarifying the regulation.

"Roads are not inherently considered occupied under 261.10(d)(1)," the memorandum notes. However, there remains **a prohibition against shooting across or along a forest road, or any body of water adjacent to a road.**

The August 29 memorandum was sent to all regional foresters, station directors, USFS law enforcement supervisors and others.

Federal forests are the property of the government and although citizens have no right or title to them, **laws including the Multiple Use - Sustained Yield Act of 1960 allow specific public uses in specific government places.**

It is a **pleasant fiction** that government lands "*belong to everyone.*" **They do not.** They belong to federal agencies, meaning that **citizens who want to use them must remain ever-vigilant to maintain their lawful access** and to let their elected officials and federal bureaucrats know about problems like this one.

DAVE WORKMAN, **Gun Week Senior Editor**, is to be congratulated on his 2005 series that **remained ever-vigilant and finally got results.**

The Brady Anti-Gun Campaign is bragging about the Senate Judiciary Committee passage of **a tightened background check bill on prospective gun purchasers.** The bill is identical to one introduced by Rep. CAROLYN McCARTHY (D-NY) and already passed by the House.

Provisions would require states to **give records of every person adjudicated as mentally defective or committed to mental institutions to the U.S. Attorney General.** This would supposedly prevent gun purchases by deranged people such as the student who killed thirty-two classmates in the Virginia Tech tragedy.

The National Rifle Association supports the bill, but **Gun Owners of America opposes it,** doubting congressional promises to remove from the federal database the names of people whose mental disqualification has been remedied, among many other potential problems.

The Senate version had no bill number at press time, but the House version is H.R. 2640. **The bill is expected to pass Congress and be signed by the President.**

Also in this issue: ● *Anti-gun judge gives Bloomberg victory* ● *Jesse Jackson to stand trial for trespassing* ● *New Jersey to shoot criminals - with cameras* ● *Poll: Americans don't want more gun laws* ● *Stolen Elvis handgun found in PortaPotty* ● *Never on Sunday in our Page Eight "Parting Shot"*

**ON THE
FEDERAL
LEVEL**

WYOMING CHALLENGES FEDS OVER GUN RIGHTS RESTORATION

The state of Wyoming says the BATF was wrong to reject their state law that allows people convicted of misdemeanor domestic violence to regain their firearms rights in the state courts.

Wyoming Attorney General Pat Crank has filed the opening brief in the U.S. Court of Appeals in Denver, challenging the ruling in May by U.S. District Judge Alan Johnson in Cheyenne.

The BATF warned Wyoming that if it continued to allow people with domestic violence convictions to buy guns, it would no longer recognize more than 10,000 concealed carry permits issued by the state as a substitute for federal background checks for firearms purchases.

The sticking point was that Wyoming's law specified that convictions could be removed for purposes of restoring firearms rights yet remain intact for purposes of enhancing punishment for any subsequent conviction.

Attorney General Crank argues that Congress has specified that states should be able to set up their own systems of restoring gun rights to people convicted of domestic violence by erasing the disqualifying convictions.

Crank said, "The BATF simply does not agree, on a policy basis, with the Wyoming Legislature's decision and has self-appointed itself the omnipotent role of deciding who should and should not possess firearms. It is trying to administratively undo what Congress has legislatively done."

Crank also argued in the brief that all petitions to restore gun rights are scrutinized by judges and prosecutors, and the state's process "is not some reckless, haphazard procedure."

**ON THE
LEGAL
FRONT**

ANTI-GUN JUDGE HANDS BLOOMBERG A BIG VICTORY

In a blow to gun owners everywhere, hard-core anti-gun U.S. District Judge Jack Weinstein of Brooklyn has ruled that he has jurisdiction over a lawsuit brought by Mayor Michael Bloomberg's New York City prosecutors against out-of-state stores that sold guns later used by New York City criminals.

Judge Weinstein wrote a 99-page decision that denied a motion to dismiss the suit without a trial made by six of the 15 gun stores named as defendants.

Weinstein made his decision by relying on statistical data tracing guns used in crimes in the city back through a string of sales and thefts to the six stores where they were first purchased. The U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives provided the data to the city, which they then used in the suit.

Weinstein's anti-gun prejudice is shown by comparing his decision to cars used in New York City crimes. By Weinstein's logic, New York City should be able to sue a car dealer in Phoenix, Arizona, for selling a large number of cars, traced through a chain of sales and thefts, that ended up being used by New York City thugs as getaway cars in bank robberies.

The U.S. Justice Department decided not to pursue charges against the dealers because the alleged "straw sales" of guns to disqualified persons caught on videotape "do not rise to a level that would support a criminal prosecution."

The Justice Department also warned New York City prosecutors of "potential legal liabilities" in using "persons outside of law enforcement" to make illegal buys. The mayor's office hired private detectives to set up the gun dealers.

Despite these warnings, New York City went ahead and Jack Weinstein now says the trial will start next January. That makes it look like it's impossible for a gun dealer to get a fair trial in Judge Weinstein's court.

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HOT ISSUE: CAN PENNSYLVANIA FREEZE GUN SALES DURING COMPUTER UPGRADE?

The state police plan to halt firearm sales in Pennsylvania to update the agency's background check system came under fire the instant it was announced.

ON THE LEGAL FRONT

The gun shutdown, scheduled for September 2 through September 6, generated outrage at the suspension of a Constitutional right, alarm that guns would not be available for the opening of dove and Canada geese hunting season, and a lawsuit by more than two dozen gun dealers and a state legislator.

Gov. Ed Rendell said the state would go ahead despite the protests and that the work should be finished and the system back online by the early morning hours of September 6.

C. Robert Keenan, a Pittsburgh lawyer representing the gun dealers and state Rep. Timothy Solobay (D-Washington), filed an emergency injunction request with Commonwealth Court Senior Judge Keith Quigley.

However, no gun dealers showed up in court and state police lawyers argued successfully that dealers should not be allowed to testify by phone.

That left no testimony to back up the assertion that the shutdown would be costly for the businesses. "I haven't seen any harm," said Quigley. "I can't presume that." He ruled that the shutdown could go ahead as planned. The system shut down at 6 pm. Sunday, September 2. It was still shut down at press time.

JESSE JACKSON FACES TRIAL FOR BLOCKADING GUN SHOP

The Rev. Jesse Jackson has asked for a jury trial on trespassing charges stemming from his June arrest for blocking the entry to a gun shop where he was demonstrating against gun rights.

A Cook County Circuit Court judge set a November 26 jury trial for Jackson, 65, and the Rev. Michael Pfleger. Both were arrested and charged with criminal trespass to property on June 23 after they refused to move away from the entrance to Chuck's Gun Shop and allow the public to enter where they had a right to enter.

Jackson has made a campaign of anti-gun protests at out-of-city gun shops, claiming the suburban stores' "proximity to Chicago provides gang members and criminals easy access to firearms."

Jackson has not made any call to crack down on gang members and criminals. Jackson is also allied with numerous groups that advocate "less incarceration of minority suspects" on the theory that they suffer racism, being over-represented in prison populations compared to their proportion of the general population.

PARKER IS NOW HELLER

Gun rights supporters who have been following the historic lawsuit of Washington, D.C. residents against the District of Columbia for violating their Second Amendment rights are used to seeing "Parker v. District of Columbia" when the case is discussed. Not any more.

Pro-gun activists should be aware that the case is being appealed to the U.S. Supreme Court where the roles are reversed. So the District of Columbia will come first in the title of the case.

The big change, however, is that the name of Shelly Parker will be removed and replaced with that of Dick Heller, who was found to be the only plaintiff in the original case who still has legal standing.

Heller is a D.C. police officer who is licensed to carry a firearm in Washington D.C. due to his employment at the Thurgood Marshall Federal Judiciary Building.

So the case is now, "District of Columbia v. Heller."

The Supreme Court is not required to hear the appeal and has not yet decided whether it will.

If the high court does grant a writ of certiorari, the issue will be whether the Second Amendment is an individual right or a collective right.

The outcome will affect gun rights in the United States for decades to come.

CALIFORNIA

San Francisco Mayor Gavin Newsom has signed three pieces of anti-gun legislation, one prohibiting the possession or sale of firearms on city property, another requiring firearms in residences to be in a locked container or have trigger locks, and the third to require firearms dealers to submit an inventory to the chief of police every six months.

IN THE STATES

A Newsom crony, San Francisco Assemblyman Mark Levin, will seek state legislation to ban gun shows at Daly City's Cow Palace, which belongs to the state Department of Agriculture's Division of Fairs and Expositions.

Newsom said, "This reinforces that San Francisco is not a friendly place for the distribution or sale of firearms."

Governor Arnold Schwarzenegger has signed Assembly Bill 845 into law, to create a system that will allow temporary transfer of firearms to writers and consultants for the purpose of testing and evaluation.

MAINE GETS TWO NEW PRO-GUN LAWS

Maine's legislative session has ended with Democrat Governor John Baldacci signing two important pro-gun bills into law. LD148 directs the Commissioner of Public Safety to work in cooperation with the Attorney General to review other states' concealed weapon laws to see where Maine may enter into a reciprocity agreement. This bill was championed by Rep. Rich Cebra (R-101).

Cebra also sponsored LD1156, which amends the Maine Criminal Code to protect individuals from civil prosecution if the degree of force used in a self-defense case was justified.

MISSOURIANS DON'T NEED SHERIFF'S PERMIT TO BUY GUNS ANYMORE

Residents of Missouri no longer need a Sheriff's permit to buy a gun, but they still need a permit for concealed carry. The old requirement was taken off the books as part of a 20-page bill when the state legislature passed its "Castle Doctrine" self-defense law earlier this year.

Gun purchasers were previously required to get a Sheriff's permit to buy a gun under a 1921 law so officials could do a background check. The National Instant Criminal Background Check System (NICS) made that redundant (and a nuisance) years ago, but it wasn't repealed until this year.

NEW JERSEY MAYOR WANTS TO SHOOT CRIMINALS -- WITH CAMERAS

Anti-gun Newark Mayor Cory Booker has announced a plan to install \$3.2 million worth of surveillance cameras in high crime areas to help catch criminals. His plan came in response to the brutal murder of three college students next to an elementary school. If that was supposed to make residents feel safer, there were already cameras around the school where this vicious crime occurred.

NORTH CAROLINA JUDGES CAN CARRY CONCEALED ON THE JOB

North Carolina Governor Mike Easley has signed House Bill 573 into law, which allows district and superior court judges who have a valid Right-to-Carry permit to carry a concealed firearm into a court building housing a court of the General Court of Justice if the judge is in the building to conduct his or her official duties.

WEST VIRGINIA EXPANDS RECIPROCITY AGREEMENTS

West Virginia Attorney General Darrell McGraw has announced that he has entered into a concealed handgun reciprocity agreement with Pennsylvania. That brings the number of recognized reciprocity states to eight for West Virginia. The state already had full reciprocity agreements with Arkansas, Florida, Kentucky, North Carolina, Ohio, South Dakota, and Virginia. Resident with permits can now legally carry concealed in those states and their residents can do the same in West Virginia. The Legislature changed state law earlier this year to allow the attorney general, rather than the governor, to negotiate such agreements.

ZOGBY POLL SHOWS PUBLIC WANTS BETTER ENFORCEMENT, NOT NEW LAWS

A poll conducted by Zogby International for Associated Television News found that 66 percent of the American voting public rejects the notion that new gun laws are needed.

Only 31 percent think new and tougher gun control legislation is needed.

The poll surveyed 1,020 Americans from August 8-11, 2007. The responses have

a margin of error of 3.1 percent.

POLLS AND STUDIES

The poll asked: "Which of the following two statements comes closer to you own opinion? Statement A: There needs to be new and tougher gun control legislation to help in the fight against gun crime. Statement B: There are enough law on the books. What is needed is better enforcement of current laws regarding gun control."

Zogby analysts noted that the majority of voters who support gun laws already on the books exists virtually across the demographic groups and in all regions of the country with the only exception being Asian and liberal voters.

Zogby International has been tracking public opinion since 1984.

STUDY CONFIRMS SUSPICIONS: MEDIA ARE BIASED AGAINST GUN RIGHTS

A study documenting seven months of media coverage on gun issues (January 1 to August 2007) has found that ABC, NBC, and CBS ran a total of 650 murder stories, but self defense appeared only once on ABC, once on NBC, and was absent on CBS.

Ironically, a survey by the *U.S. Journal of Criminal Law* found more than 2.5 million people annually use a gun in self defense.

The study released by David Neidrauer of the Culture and Media Institute was titled "The Media Assault on the Second Amendment," and came to the not-surprising conclusion that, "When it comes to the right to bear arms, to accept personal responsibility to defend home and family, the media are far from fair and balanced."

To the contrary, nearly all the gun stories made direct pitches for gun control. Some were ridiculously contrived, like an "ABC World News Sunday" on July 8 that blamed rural Pennsylvania's lawmakers for an urban crime wave in Philadelphia by refusing to pass gun control laws. Rural people cause Philadelphians to shoot each other! The military could use a few rural Pennsylvanians with such magical powers.

HARVARD STUDY SHOWS GUN CONTROL DOESN'T REDUCE VIOLENCE

A study in the *Harvard Journal of Law & Public Policy* shows that worldwide gun ownership rates do not correlate with higher murder or suicide rates. In fact, many nations with high gun ownership have significantly lower murder and suicide rates.

Don B. Kates and Gary Mauser authored "Would Banning Firearms Reduce Murder and Suicide? A Review of International and some Domestic Evidence," which disproved "the mantra that more guns mean more deaths and that fewer guns, therefore, mean fewer deaths."

To make the point, they establish that Soviet murder rates far exceeded American murder rates, and continue to do so today, despite Russia's extremely stringent gun prohibitions.

Dr. Kates and Dr. Mauser demonstrate nation after nation, Norway, Finland, Germany, France, and Denmark with high rates of gun ownership yet murder rates lower than other developed countries with more restrictive gun ownership.

ANTI-GUN ADVOCACY GROUP SAYS U.S. MOST-ARMED COUNTRY

The Geneva-based Graduate Institute of International Studies released its "Small Arms Survey 2007," a document used by the global anti-gun movement to push for world gun control. It states that U.S. citizens own 270 million of the world's 875 million known firearms, that there are 90 guns for every 100 Americans, and that about 4.5 million of the 8 million new guns manufactured worldwide each year are purchased in the United States.

India is the second most heavily armed citizenry. Per capita, Yemen is second, Finland third, Switzerland fourth, Iraq fifth, and Serbia sixth.

GUN NEWS TICKER - QUICK TAKES ON THE NEWS

●**New York City:** Donald Trump, Jr. joined his famous father among the ranks of handgun permit holders in the Big Apple this year. Junior joined the celebrity gun club with tough-guy actors (and long-time gun licensees) Robert De Niro and Harvey Keitel; film producer Martin Bregman, cosmetics heir Ronald Lauder, music czar Tommy Mottola and Marvel Comics CEO Isaac Perlmutter. Shock jocks Howard Stern and the disgraced Don Imus kept their gun permits along with lawyers Barry Slotnick and Raoul Felder. Two local district attorneys, Westchester DA Janet DiFiore and Queens DA Richard Brown are the only NYC DAs who pack heat, says the *New York Post*.

●**Lake Barrington, Illinois:** The "huge" Super-Tuesday style anti-gun protests called by Jesse Jackson last month and touted as "massive" by the Brady Campaign weren't either huge or massive when you see the details. The biggest "huge" events were "about 200" people bused in to Philadelphia and Lake Barrington, Illinois. A Maryland protest outside a District Heights gun shop drew about 60 people. The event scheduled for Seattle's Green Lake Park attracted exactly two people who spent 32 seconds lying on the grass. That gives us a whole new definition of the term "lie-in" that was used to publicize this protest. The "huge protest" was a "huge flop," showing that the American public is tired of anti-gun protests, said a news release by the Bellevue, Washington-based Citizens Committee for the Right to Keep and Bear Arms.

●**Seattle, Washington:** The story of the "lie-in" flop actually made it into the mainstream media. The *Seattle Post-Intelligencer* sent reporter Amy Rolph out to cover the planned protest. She turned in this report: "The demonstration didn't take long at all. In fact, it might have been the shortest in recent local history. It might have been the smallest, too. Two activists showed up. They stretched out on the ground for 32 seconds. Then they rolled up their banner -- www.protesteasycguns.com -- and headed for the parking lot." The 32 second business was supposed to represent each of the 32 people killed in the Virginia Tech shooting by 23-year-old Cho Seung-Hui, and also the amount of time it took for him to buy each of the several guns he brandished during the April college killings.

●**Sacramento, California:** The FBI is reportedly investigating a concealed carry permit issued by former Sacramento County Sheriff Lou Blanas as a political favor to election contributor Edwin G. Gerber the day before Blanas left office. A lawsuit alleges that Blanas not only failed to follow the department's usual procedure, which calls for a three-person committee to review applications, but he also bought a vacation home with Gerber in Reno in the fall of 2005. The lawsuit making the allegations was filed by applicants who were refused concealed carry permits. The FBI would not comment on whether they were investigating the permits, but sheriff's department officers indicated that they gave the FBI certain permit documents, but had no way of knowing if the Gerber permit was in them.

●**Moscow, Idaho:** Latah County Sheriff Wayne Rausch had to deal with a shooting rampage that left four dead and three wounded last May. He told the *Lewiston Tribune*, "In my opinion, if there were more students with concealed weapons permits, the world would be safer. Just because we are charged with protecting the public doesn't mean the public shouldn't be able to protect itself." Rausch said he particularly wanted more students on the University of Idaho campus in Moscow to carry concealed firearms to improve public safety. Moscow Mayor Nancy Chaney does not agree with Sheriff Rausch at all. Last month she asked for a legal opinion from the state attorney general's office whether the city has the authority to ban both concealed and exposed firearms in public areas such as city buildings. The shootings in Latah County were not related to college students and did not occur on a university campus. A distraught man killed his wife, then went to a sheriff's office and a church where he shot the others and then killed himself.

GUN NEWS TICKER - QUICK TAKES ON THE NEWS

●**McLean, Virginia:** Former Senator Fred D. Thompson of Tennessee, who has not officially declared his presidential ambitions, took a pot-shot at the leading Republican candidate, former New York City Mayor Rudolph W. Giuliani, for supporting gun control. Thompson, who starred in "Law & Order," wrote on his Web site: "When I was working in television, I spent quite a bit of time in New York City. There are lots of things about the place I like, but New York gun laws don't fall in that category." Giuliani was a strong advocate for gun control as a federal prosecutor and later as mayor of NYC. He called for a national gun registry and backed the ban on assault rifles. Many gun owners see Thompson as a friend, but Giuliani leads in all the polls and shows strength over Democrat candidate Hillary Clinton. Thompson is expected to announce his candidacy soon. He lives in Northern Virginia, near Washington, D.C.

●**Omaha, Nebraska:** The Omaha Housing Authority has a new rule that bans guns in public housing projects, even if residents own them legally. Tenants caught with guns in their apartments will be evicted, but will not face criminal penalties if they own the gun legally. Two large housing projects in Omaha, Pleasantview Homes and Spencer Homes have seen some shootings and homicides. City authorities cannot control the criminals so they will control the guns of honest citizens struggling to live in dangerous places. The outcome for Omaha's projects is all too predictable.

●**San Jose, California:** Officials of Ebay, the wildly popular Web-based auction site, have removed a humorous ad critical of their anti-gun policy. The ad said: "In celebration of Ebay's new firearm parts policy we proudly offer the ONLY genuine, fully automatic ASSAULT ROCK!!! Get yours fast before Ebay decides you can't. It seems guns have some legal standing in the Constitution of the United States (not on Ebay). Our crack team of right-wing lawyer wannabees are looking for rock protection as you read this. Besides, it keeps them from esoteric pursuits such as trying to figure out why liberals exist. These incredible tools started out as just lousy old Colorado granite, but have been transformed into works of art worthy of, and able to induce, shock and awe!" Got yours yet?

●**Chandler, Arizona:** Administrators of Payne Junior High suspended the 13-year-old son of Ben and Paula Mosteller for sketching what looked like a gun, saying the action posed a threat to his classmates. The parents said the drawing was a harmless doodle and school officials overreacted. The drawing did not show blood, bullets, injuries or target any human, they said. When the father went to talk to administrations they talked about the Columbine shootings in Colorado, which the father found offensive. School district spokesman Terry Locke said the drawing was "absolutely considered a threat," and was punishable. The suspension of five days was reduced to three.

●**Memphis, Tennessee:** A handgun owned by Elvis Presley was stolen during the recent commemoration of the 30th anniversary of the performer's death, but was later recovered from a portable toilet by a cleaning man. A surveillance camera caught the thief on tape removing the rock 'n' roller's black 9mm Smith & Wesson pistol from the "Elvis After Dark" exhibit. The thief has not been identified or captured. The exhibit included a television with a bullet hole in it that Elvis is reputed to have shot with the Smith & Wesson.

●**Washington, D.C.:** The Theodore Roosevelt Conservation Partnership has revealed its true colors after masquerading as a hunting and fishing outfit. Earlier this year, TRCP announced formation of the Union Sportsmen's Alliance, a group of 20 solidly Democrat labor unions, who gave TRCP a check for \$1.2 million. TRCP is now trying to steal members from the National Rifle Association - about a quarter of all union members today also belong to the NRA - by assailing the NRA's support for Republican gun rights candidates. TRCP is trying to convince union members that Democrats will protect their jobs, but they're not saying much about their gun rights.

Parting Shot

NEVER ON SUNDAY

Super Stop is a rather ordinary convenience chain with food stores running up the South Florida coast from Miami Beach north past its headquarters in Pompano Beach.

There's a Super Stop Food Store in the little town of Pembroke Pines that's not so ordinary.

It has a clerk named Bruce Flanders, 54, who usually works the Sunday shift, as he was doing one Sunday in mid-August.

About 12:15 p.m. on that Sunday, Norman L. Thompson, 21, and his shotgun came in the door along with accomplice Joe Willie Walden, 28.

They demanded money at gunpoint.

Flanders was no ordinary clerk. He didn't panic.

He didn't just hand over the money and make the store an easy target ever after.

Or risk being killed if these two thugs decided to leave no witnesses.

He took out the store handgun and shot Thompson twice, hitting him once in the abdomen.

Thompson and Walden fled.

Thompson didn't get far.

Deputies found him in an alley behind Boyd's Family Funeral Home.

Walden was harder to find.

The sheriff's department sent a canine unit and the dog found Walden hiding in a Dumpster nearby.

Thompson was taken to Memorial Regional Hospital after being shot. He died at six Sunday evening.

Walden was taken from the Dumpster to Broward County Jail. He faces charges of armed robbery, murder and obstruction with violence.

It was an altogether bad Sunday for robbers at the Pembroke Pines Super Stop.

Sgt. John Jacob, a police spokesman, said that Flanders fired his gun in self-defense. No charges will be filed.

Under Florida's new Stand Your Ground law, Flanders will not be liable for any civil lawsuit that Thompson's survivors might bring, or any legal action from Walden.

Mohammad Hussein, 35, the owner's son-in-law, said the store had never been the target of an armed robbery, only occasional shoplifting.

Regular customer Desmond Brammer, 63, said he had expressed concern to the owner about the sales counter lacking protective glass.

It didn't bother Bruce Flanders.

Alan M. Gottlieb

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