

The Gottlieb-Tartaro Report

THE INSIDERS GUIDE FOR GUN OWNERS

Issue 093

September, 2002

Dear Subscriber,

The Citizens Committee for the Right to Keep and Bear Arms (CCRKBA) has obtained through the Freedom of Information Act a copy of the **full memo** sent last November by **Attorney General JOHN ASHCROFT** to the United States Attorneys, which interpreted the Second Amendment as **protecting an individual right** rather than a government power to maintain militias.

So far, only small excerpts from this historic document have appeared in print, to our knowledge. Here, then, is the text in full:

ASHCROFT MEMO

MEMORANDUM TO ALL UNITED STATES ATTORNEYS

FROM The Attorney General [John Ashcroft signature]

RE: *United States v. Emerson*

On October 16, 2001, the United States Court of Appeals for the Fifth Circuit issued its decision in *United States v. Emerson*. I am pleased that the decision upholds the constitutionality of 18 U.S.C. 922(g)(8) - which prohibits violent persons who are under domestic restraining orders from possessing firearms. By taking guns out of the hands of persons whose propensity to violence is sufficient to warrant a specific restraining order, this statute helps avoid tragic episodes of domestic violence. As I have stated many times, reducing gun crime is a top priority for the Department. We will vigorously enforce and defend existing firearms laws in order to accomplish that goal.

Emerson is also noteworthy because, in upholding this statute, the Fifth Circuit undertook a scholarly and comprehensive review of the pertinent legal materials and specifically affirmed that the Second Amendment "protects the right of *individuals*, including those not then actually a member of any militia or engaged in active military service or training, to privately possess and bear their own firearms...." The Court's opinion also makes the important point that the existence of this individual right does not mean that reasonable restrictions cannot be imposed to prevent unfit persons from possessing firearms or to restrict possession of firearms particularly suited to criminal misuse. In my view, the *Emerson* opinion, and the balance it strikes, generally reflect the correct understanding of the Second Amendment.

The Department can and will continue to defend vigorously the constitutionality, under the Second Amendment, of all existing federal firearms laws. The Department has a solemn obligation both to enforce federal law *and* to respect the constitutional rights guaranteed to Americans. Because it may be expected that *Emerson* will be raised in any number of firearms cases handled by this Department, it is important that the Department carefully assess the implications of the *Emerson* decision and how it interacts with existing circuit precedent. Accordingly, United States Attorney's Offices should promptly advise the Criminal Division of all cases in which Second Amendment issues are raised, and coordinate all briefing in those cases with the Criminal Division and the Solicitor General's office.

As the Supreme Court has long observed, the mission of the Department "in a criminal prosecution is not that it shall win a case, but that justice shall be done..." *Berger v. United States*, 295 U.S. 78, 88 (1935). Justice is best achieved, not by making any available argument that might win a case, but by vigorously enforcing federal law in a manner that heeds the commands of the Constitution.

Also in this issue: ● *NICS system now allows e-mail appeals* ● *Emerson case to be retried* ● *California district attorneys sue attorney general* ● *Battle of the books* ● *Maine voters reject hunting ban* ● *Self defense for survivors in our Page Eight iParting Shoti*

NICS ANNOUNCES STREAMLINING OF THE APPEALS PROCESS

THOSE DENIED THE PURCHASE OF A FIREARM MAY NOW APPEAL USING E-MAIL

Gun purchasers will be happy with a **new development** in the National Instant Criminal Background Check System (NICS).

NICS is **updating its appeal process** for those individuals prevented from buying a firearm.

INSTANT BACKGROUND CHECK UPDATE

NICS is the system which **approves or denies** the retail sale of firearms by Federal Firearm Licensees (FFLs) in their stores and at gun shows.

NICS is operated by a combination of the FBI and state and county law enforcement officials.

Now, **individuals denied the purchase of a firearm may appeal that denial by contacting NICS at a new e-mail address.**

It is not unusual for legitimate gun purchasers to find their application denied because of an erroneous problem in the NICS system: a convicted felon with the same name who has been properly identified as a disqualified person; a slip-up in which a wrong box has been checked, such as indicating a history of chronic mental illness; and other erroneous problems that would result in a NICS denial.

Previously, to initiate an appeal, **individuals were required to contact NICS by U.S. mail**, which commonly resulted in lengthy delays in the appeal process.

The National Instant Criminal Background Check System estimates that **27% of appealed denials are overturned** for a variety of reasons, allowing the sale to proceed.

"Allowing the use of e-mail to initiate the appeal will shorten the process by at least one week and provide the consumer with a more timely decision on the appeal" says JOHN BADOWSKI, director of retail partnerships for **the National Shooting Sports Foundation (NSSF)**, the largest and oldest trade group representing the firearms industry.

To initiate an appeal under the new e-mail process, individuals send their name, address and the NICS Transaction Number (NTN) to nicsappeal@leo.gov.

The NTN is the unique number generated by the NICS system and assigned to each background check, and provided to the FFL when the background check is made.

The FFL provides those denied individuals with the NTN in a brochure outlining the appeals process.

A copy of the newly designed NICS brochure with new e-mail instructions can be downloaded from the National Association of Firearms Retailers Web site at www.nafr.org.

Copies are also available free of charge to Federally Licensed Firearms retailers through NSSF and can be ordered by calling (203) 426-1320.

Many G-T Report subscribers are already familiar with the National Association of Firearms Retailers. It is a division of the **National Shooting Sports Foundation** and works to shape a brighter future for retailers by helping them stay on top of critical issues small businessmen and women face.

In addition, NAFR provides retailers with a unified voice in regulatory and legislative affairs, appropriate support services and professional development opportunities.

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SUPREME COURT MAY SAY IF YOU CAN SHOOT PICTURES OF OSAMA BIN LADEN

Is target shooting at pictures of SADDAM HUSSEIN or OSAMA BIN LADEN an **expression of free speech** or a **dangerous drill** that could lead to the killing of real people?

The Supreme Court may answer the question in a case challenging a 4-year-old Massachusetts law forbidding target practice on human images at certain gun clubs. The ban applies to clubs that have a special license for large-capacity weapons.

The law is the only one of its kind, and was challenged by a group that includes gun clubs, a minister, and a retired military officer who competes in wheelchair shooting events. Their attorney, STEPHEN HALBROOK, calls the law "political correctness to the ultimate degree."

The court will announce this fall whether it will review the gun case.

FAMILY TO FILE LAWSUIT AGAINST MOONIE GUN MAKER

The family of DANNY GUZMAN, who was shot to death in front of a Worcester, Massachusetts night club with a 9mm Kahr pistol in 1999, **has filed a lawsuit against local gun manufacturer Kahr Arms.**

ON THE LEGAL FRONT

Investigators have alleged that the gun was one of several stolen from Kahr Arms by Kahr employees with criminal records.

Also named in the suit is Kahr Arms' parent company, **One Up Enterprises**, a holding company for the Reverend Sun Myung Moon's Unification Church.

EMERSON CASE SET FOR RETRIAL

Timothy Emerson, a Texas doctor who challenged a federal law in a closely watched Second Amendment case, will be retried in federal court in Lubbock October 7 on a charge of possessing a firearm while under a restraining order.

The 5th Circuit Court of Appeals last October **overturned U.S. District Judge Sam Cummings' ruling that dismissed the charge against Emerson**, but determined that the Bill of Rights protects an individual's **Second Amendment right to bear arms.**

The case, which determined that the Second Amendment protects an individual's right to bear arms, and not just the government's power to form militias, was funded by the Second Amendment Foundation (SAF).

SAF said that **regardless how Emerson's retrial comes out on the possession issue, it is likely to be appealed.**

"It's not over yet," said a SAF spokesperson.

DISTRICT ATTORNEYS FILE SUIT AGAINST CALIFORNIA ATTORNEY GENERAL

In an unprecedented move, **two California district attorneys have joined a lawsuit against BILL LOCKYEAR, the state's attorney general**, challenging a law that bans firearms based on their cosmetic features.

The suit stems from problems in enforcing a 1999 amendment to the state's "assault weapon" law, based on considerable trouble defining what constitutes an "assault weapon."

Mendocino County District Attorney NORMAN L. VROMAN said, "Not only are the regulations themselves ambiguous, but unfortunately the Attorney General is sending mixed signals to front line law enforcement, prosecutors, and civilians working under him."

APPEALS COURT UPHOLDS WISCONSIN'S ANTI-GUN CONCEALED CARRY LAW

A state appeals court has **upheld Wisconsin's law that makes it a crime to carry a concealed weapon** for everybody but police officers.

HAROLD GRIMES III challenged the law as being an unconstitutional violation of his gun rights. The court, however, said a 1998 pro-gun constitutional amendment says nothing about the right to carry concealed weapons.

NEW BOOK GIVES SHOT IN THE ARM TO GUN OWNERS

JOYCE LEE MALCOLM, a Bentley College history professor, is a **leading defender of gun rights**. She has won praise from US Supreme Court Justice ANTONIN SCALIA and testified on the right to bear arms before congressional subcommittees.

MALCOLM's latest book, "Guns and Violence: The English Experience," was called **irequired reading** for "even the most hardened anti-gunners" in a recent *Wall Street Journal* review.

In "Guns and Violence," her second work on gun rights, MALCOLM **challenges the conventional view** that England, with the most restrictive gun laws of any democracy, is **peaceful compared with America**, where it is legal to carry a concealed weapon in 33 states.

BATTLE OF THE BOOKS

Her new book came from research on the **English Bill of Rights of 1689**. That document, Malcolm said, noted Parliament's recognition of the right of all English Protestants - about 90 percent of the nation - to keep arms to defend themselves. **The Second Amendment is a direct descendant of this document**, she said, although some scholars disagree, particularly CARL T. BOGUS, a law professor and former director of Handgun Control, Inc.

Although many Britons took advantage of this right, MALCOLM said, violent crime remained low for hundreds of years. A government study for the years 1890 through 1892 found **only three handgun homicides**, an average of one a year, in a nation of 30 million people. In 1904, there were **only four armed robberies** in London, then the world's largest city.

But in the 20th century, the government began banning guns. Ostensibly, the concern was crime, Malcolm said, but the real reason, at least initially, was a **fear of revolution**. Today, the pendulum has swung so far against gun ownership that guns are banned and someone who defends himself with a firearm is often in more trouble than those he is fending off, Malcolm said.

MALCOLM dismisses critics such as BOGUS as **not knowing much about English history**.

Other academics praise her. SANFORD LEVINSON, a professor of constitutional law at the University of Texas and a self-described liberal Democrat, said MALCOLM is one of a growing number of scholars - LAURENCE TRIBE, a constitutional law authority at Harvard Law School, is another - who have recently begun to **take the arguments of gun-rights activists seriously**.

"Guns and Violence: The English Experience" is a must-read for gun rights defenders. It is available through Amazon.com.

MORE TROUBLE FOR AUTHOR OF 'ARMING AMERICA'

Emory University is continuing its investigation of **historian MICHAEL BELLESILES**, author of the notorious book that attacks the "myth" of early American gun ownership. **BELLESILES is suspected of academic fraud**.

"Professor Michael Bellesiles will be on paid leave from his teaching duties at Emory University during the fall semester," the university said in a recent statement.

Emory was forced to begin its investigation after critics exposed extensive errors and **apparent fabrication of sources** in "Arming America."

Scholars especially condemned "Arming America's" misrepresentation of 18th- and 19th-century probate records, which Mr. BELLESILES said **proved that guns were rare in America's early days**.

Northwest University law professor JAMES LINDGREN suggested that BELLESILES had **fabricated some sources**, and then claimed they had been destroyed in the 1906 San Francisco earthquake - but no such records had ever been in San Francisco.

In May, the National Endowment for the Humanities announced it was withdrawing its sponsorship from a fellowship awarded to Mr. BELLESILES.

Emory's investigation of BELLESILES was complete last April, but results indicated that **an investigation by an independent committee of distinguished scholars should begin**. That investigation goes on.

DINGELL EASILY WINS DEMOCRATIC PRIMARY AGAINST ANTI-GUN DEMOCRAT

Redistricting forced long-time gun rights supporter Rep. JOHN DINGELL (D-MI) into a primary with fellow Democrat, strongly anti-gun Rep. LYNN RIVERS. **It was a rare primary match-up between incumbents.**

It was also unusual because the two incumbents held similar views on many issues - **except gun control**. RIVERS was a strong advocate of gun control while DINGELL was just as strong for gun rights.

**AT THE BALLOT
BOX**

The Brady Center to Prevent Gun Violence worked feverishly to defeat DINGELL. They sent volunteers into Michigan's newly created 15th Congressional District for six weeks taping get-out-the-vote messages by actor MARTIN SHEEN. **Founder SARAH BRADY even went to the district to stump for RIVERS.**

JOE WALDRON, executive director of the Citizens Committee for the Right to Keep and Bear Arms, said, "Rivers blew it by making the campaign a referendum on gun control. Despite all her celebrity support, voters in the strongly Democratic 15th District were not impressed."

RIVERS lost by a lopsided 41% to DINGELL's 59%. Even so, Handgun Control, Inc. claims DINGELL just "squeaked by."

Some squeak.

KANSAS PRIMARY SURPRISES POLLSTERS, NOMINATES PRO-GUN CANDIDATES

The pollsters didn't see it coming as pro-gun activists moved under the radar screen to nominate their candidates **by a landslide** in Kansas' tight Republican races.

Last-minute campaign blitzes by gun rights supporters, combined with low voter turnout, helped TIM SHALLENBURGER win the GOP governor's nomination, and PHILL KLINE to win the attorney general's race.

Some analysts said the vote went to SHALLENBURGER because of his strong anti-tax message.

The KLINE race, however, could have had nothing to do with taxes, since attorneys general do not make tax policy.

The KLINE race depended heavily on pro-gun groups that came to his aid in the last days of the campaign. He had only a narrow lead before the primary, but after the ballots were counted, KLINE had 50 percent of the vote, with his major opponent, state Sen. DAVID ADKINS, capturing 39 percent.

VOTERS IN MAINE TOWN REJECT HUNTING BAN

A controversial referendum **to ban hunting** in Kittery, Maine's 72-acre Town Farm Forest was soundly defeated in the recent election.

The vote was 1,093 to 396.

Residents have voted against changing the hunting-friendly ordinance that governs the forest on two previous occasions.

NANCY BOGENBERGER, a member of **Kittery Wildlife Friends**, was upset by the results. "Evil thrives when good men do nothing, and I think the people of Kittery did nothing," she said.

Members of Kittery Wildlife Friends, led by SUE JOHNSON, had gathered more than 900 valid signatures in June in an effort to overturn the hunting ordinance.

The proposal put them at odds with local hunters and state wildlife officials, who said an abundance of deer in southern Maine poses a threat to local residents.

Lyme disease and automobile accidents involving deer would increase if another town in southern Maine closed a hunting zone, they said.

Virtually the only people who supported the referendum lived near the forest, saying they felt threatened by the presence of hunters armed with rifles "with a range of nearly a mile," one resident said.

Among those voting against the referendum was JOHN EISFELLER, a young father and avid hunter. "There's only so much area you can hunt on as it is now." He left the polls with his daughter perched on his shoulders.

MEXICO MAY BAN TOY GUNS TO HELP REDUCE CRIME

A ban on toy guns may become the latest of several nontraditional anti-crime measures being attempted in Mexico City, district prosecutors reported recently.

Bernardo Batiz, Mexico City's top prosecutor, told the government news agency Notimex that his office is studying ways to ban toy guns, which have been used in several recent stickups, or require toy makers to manufacture them in colors less realistic than black.

COLOMBIA TO ARM 15,000 PEASANTS

Defense Minister Martha Lucia Ramirez has announced plans to arm 15,000 mostly poor farmers to help fight leftist guerrillas and an outlawed paramilitary group. The recruits will receive a small salary, firearms, uniforms and boots, but will live in their homes and protect their own neighborhoods.

**AROUND THE
WORLD**

CANADIAN GUN REGISTRATION LAWS KEEPS AWAY U.S. CIVIL WAR ENACTORS

A re-enactment by several hundred American Civil War enthusiasts near Toronto will go ahead this year without its American contingent. They're staying home rather than comply with a new Canadian law that would require them to register their muskets at the border.

BRITISH HANDGUN BAN UNDER REVIEW

The handgun ban imposed in the wake of the Dunblane massacre is being reviewed to improve Britain's medal prospects at international pistol-shooting competitions. New rules would put hundreds of pistols back in the hands of marksmen six years after the tragedy in which 16 school children and their teacher were murdered by gunman Thomas Hamilton.

INSIDE THE INDUSTRY

GUNMAKER HEADQUARTERED IN SCOTTSDALE

Legendary gunmaker Smith & Wesson of Springfield, Massachusetts is now headquartered in Scottsdale, Arizona. It was purchased in May from a British conglomerate by a five-year-old company called Saf-T-Hammer based in Scottsdale.

Saf-T-Hammer has changed its name to Smith & Western Holding Corp, and now has 11 people working in its Scottsdale office. Smith & Wesson's company name is unchanged. There are no plans to move any manufacturing to Arizona, leaving about 700 employees at its plants in Springfield and in Houlton, Maine.

GUN PRODUCER MAY HELP COLORADO TOWN'S ECONOMY BOOM

Businessman Eric T. Curlee recently announced he would be locating a start-up firearms corporation - and ultimately 150 jobs - in the economically strapped town of Cortez, Colorado.

The new company, called ETC7, a name based on Curlee's initials, will assemble and distribute high-end firearms and related items such as holsters.

SIG ARMS HUNTS FOR MISSING FIREARMS

SIG Arms Inc. Chairman and Chief Executive Officer Herbert Rudolf has sent a letter to current and former employees offering amnesty for the return of firearms that might have been "improperly removed" from the facilities.

The company is unable to account for the whereabouts of every firearm in its records. Robert Joyce, SIG Arms's attorney, said the question of missing firearms could be a software clerical error, or a failure to log a serial-numbered frame that was destroyed for quality control reasons, but could also be the result of firearms improperly taken from the premises in Exeter, New Hampshire.

Under the federal Gun Control Act, a violator can be imprisoned up to 10 years, fined, or both. No guns have been returned under the amnesty to date.

Rudolf's letter stated that if SIG Arms receives any firearm under its amnesty, the company's investigation will cease as to that firearm.

GUN NEWS TICKER - QUICK TAKES ON THE NEWS

●**Ohio:** AcuSport Corporation recently held a special Sporting Clays Shoot and Barbecue at Mad River Sportsman's Club in Bellefontaine and raised over \$75,000 for the National Republican Congressional Committee (NRCC). More than 300 representatives from the shooting industry, area businesspeople and Ohio politicians enjoyed a day of target shooting, a reception and dinner.

●**Maryland:** Handgun sales dropped nearly 8 percent during the first 6 months of this year over the same period last year, according to statistics from the Maryland State Police. State officials said they believe a state law that went into effect in October 2000 requiring a ballistic fingerprint for every gun manufactured for sale in the state contributed to the decline.

●**North Carolina:** Governor Michael Easley has signed H.B. 622 into law, prohibiting politically motivated municipal lawsuits that seek to hold the firearm industry liable for the criminal or negligent use of its products.

●**New York:** The Rev. Al Sharpton told NBC's "Meet the Press" he supported gun control, gay marriage, and slavery reparations and denounced the Bush administration's tax cuts and support for school vouchers. Sharpton is exploring whether to make a presidential bid.

●**California:** The California General Assembly has passed AB 496, a bill that would allow liability lawsuits to be filed against firearm manufacturers for the criminal or negligent use of their products. The bill now goes before Gov. Gray Davis, but there is no word from his office on what action he plans to take. Watch this one. It could be deadly.

●**New York:** Democratic gubernatorial candidate Andrew Cuomo has charged that Gov. George Pataki has not done enough to stop "gun violence" and called for new gun control measures including universal safety locks. Cuomo is the former federal housing secretary during the Clinton administration.

●**California:** A proposed constitutional amendment to levy a nickel tax on every bullet sold in California won't be considered this year, meaning the first-in-the-nation measure wouldn't reach voters until at least 2004. The measure cleared one Senate committee, but was pulled from consideration before it was to be heard in a second committee. The Citizens Committee for the Right to Keep and Bear Arms suggested it would be better requiring anyone convicted of shooting someone to pay their victim's medical costs before they are freed from prison.

●**Boston:** The number of active firearms licenses in Massachusetts has plummeted in the four years since the state adopted one of the worst gun control laws in the country. The nearly 1.5 million active gun licenses in the state in 1998 is down to just 200,000, in large part because the new law abolished lifetime licenses.

●**San Francisco:** The San Francisco Unified School District is having qualms about a new program designed to put police officers in schools to protect students, because their prime candidate to lead the program wants to carry a gun. Police Lieutenant Vivian Williams, an 18-year SFPD veteran, was considered, but teachers and school board members don't want cops with guns in the schools. They still haven't decided what to do.

●**Texas:** The Texas Department of Public Safety has experienced a surge in applications for concealed carry permits. In August 2001, there were 3,089 requests for application packets. In September, after the terrorist attacks, there were 6,570. In October 2001, 10,046 people contacted DPS for packets. In addition, the number of students taking the DPS-approved concealed handgun course at qualified ranges has increased this past year. The owner of an Amarillo gun shop with an indoor range said there were 28 students in the current class, where there were typically nine to 12 people before September 11. Currently 42,174 of the state's 226,119 concealed handgun permits are held by women.

Parting Shot

SELF DEFENSE FOR SURVIVORS

The stories keep coming in. Guns saving lives. People in grave danger defending their lives with guns. And the astonishing thing is that they're not just coming in from readers, they're coming in from press clips in mainstream newspapers. Self defense with guns is being reported in the media more and more. For example:

A Florida newspaper reported that a Howard Johnson motel manager and his 16-year-old daughter were trapped in their room by two men trying to rob them. Steven D. Robey, 46, was pinned to his bed with a gun to his head when he reached under his pillow for his .45-caliber semi-automatic pistol and shot both men "to save his and his daughter's lives."

Robey has a license to carry a concealed weapon, records show. He was not charged with a crime, and the state attorney's office will look into the shooting and determine whether it was justified.

A Minneapolis newspaper reported that Harvey Keefe, who recently turned 80, shot a burglar in the arm as the man wiggled the doorknob to get into his locked bedroom. Keefe is a decorated World War II veteran who fought at Iwo Jima.

Keefe didn't think twice when he was awakened by the loud slam of his back door being kicked in. He listened as someone shuffled through his bungalow home and grabbed his .38-special handgun that he has had since the 1950s and keeps on his bedside table for protection. As the burglar fumbled with the doorknob to his bedroom door, Keefe shot through the door.

Police later told him he hit the burglar in the arm. Jimmie Lee Emerson, 48, was found by police who followed a trail of blood. He was in a local hospital recovering from the gunshot wound and also under arrest on suspicion of burglary.

Police took Keefe's weapon as evidence, but they are not investigating him for any wrongdoing, according to police.

A Connecticut newspaper reported that two men at a carwash were cleaning their Oldsmobile when three others pulled up and tried to rob them. Big mistake. One of the intended robbery victims had a gun and killed the first robber, Norman Moore, 24, causing the other two to flee. Police arrested one, Rashad Williams, 27, of East Hartford. He was charged with being an accessory to first-degree assault and conspiracy to commit first-degree assault. The other is still at large.

Neither of the two men with the Oldsmobile, who police did not identify, were charged. The man who shot and killed Moore was carrying the weapon legally, police said.

Alan M. Gottlieb

Joseph D. Tartaro

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