The Gottlieb – Tartaro Report

Issue 099 March, 2003

Dear Subscriber,

Surprise: the U.S. Supreme Court's recent decision in a copyright case may have **opened the door for final recognition of the individual right to bear arms**. How can that be? In a 7-2 ruling on January 15 in *Eldred v. Ashcroft*,

the high court **minimized the introductory language** of the Constitution's copy-

right and patent clause - "to promote the progress of science and useful arts" - in favor of **the meat of the clause**, the power to grant copyrights and patents.

The argument in the *Eldred* case had nothing to do with guns, but addressed

BURST OF FIRE ON THE LEGAL FRONT

whether Congress has the power to arbitrarily extend copyright protection. However, only one other provision in the Constitution contains such an introductory clause: the Second Amendment. The "militia" introduction, therefore, might also be minimized in favor of "the right of the people" to keep and bear arms.

JOE WALDRON, executive director of the Citizens Committee for the Right to Keep and Bear Arms, said, "It indicates that seven members of the court recognize that just because a prefatory clause exists, doesn't necessarily mean it drives the overall thrust of whatever issue is being addressed."

Gun control groups endlessly use the prefatory language - "a well-regulated militia, being necessary to the security of a free state" - to insist that **the right is a collective one**, not an <u>individual</u> right.

Columbia Law School Professor MICHAEL C. DORF said the copyright case suggests that the Supreme Court does not take the prefatory language as seriously as the main clause of the provision.

George Mason University law professor NELSON LUND mostly agreed with DORF, but said the Second Amendment's main clause giving an individual the right to bear arms would have held up in court.

In another important court case, a 9th U.S. Circuit Court of Appeals panel reluctantly upheld a local California ordinance banning gun shows or "weapons bazaars" (as the anti-gun media calls them) on government property such as fairgrounds.

The San Francisco-based court's three judge panel dismissed a challenge to an Alameda County ordinance, ruling that gun owners had neither a First Amendment nor Second Amendment right to possess weapons for sale on county property.

The decision is important for two reasons: first, if it survives appeal, it is expected to lead to a storm of similar ordinances across California, the nation's only state where municipalities have barred gun shows on government property.

Second, the panel ruled as it did **only because precedent in the 9th Circuitís case law locked them into it**. The judges said they were following a perhaps flawed 9th circuit precedent that says only state militias, and not individuals, have the right to bear arms. **Circuit rules forbade them to decide otherwise**, even though they might agree with the New Orleans-based 5th U.S. Circuit Court of Appeals, which has ruled in the *Emerson* case, that the Second Amendment does protect an individual right. *(continued on Page 2)* **Also in this issue:** • 500 Magnum up for ban • Judges in Arkansas given special gun rights • Russian group proposes arming citizens • Armed pilots program hits some turbulence • Gun rights at college • Outrage! in our Page Eight iParting Shotî DONÍT MISS THIS ISSUEÍS SPECIAL BREAKING NEWS SUPPLEMENT One of the three judges, Judge DIARMUID F. O'SCANNLAIN, said "If we were writing on a blank slate, we may be inclined to follow the approach of the 5th Circuit."

An *en banc* 11-judge panel of the 9th U.S. Circuit Court of Appeals may yet examine the meaning of the Second Amendment, or the case may be appealed to the U.S. Supreme Court.

In another important case, two Cato Institute scholars have filed a civil lawsuit in Washington, D.C. federal court on behalf of six plaintiffs to assert the right of D.C. residents to defend themselves in their home.

ROBERT A. LEVY, Cato senior fellow and GENE HEALY, senior editor, joined by two other D.C.-based attorneys, said their complaint, "The Second Amendment guarantees individuals a fundamental right to possess a functional, personal firearm, such as a handgun within the home."

But, they argue, D.C. officials "enforce a set of laws that deprive individuals, including the plaintiffs, of this important right."

The plaintiffs are asking the federal court to prevent D.C. from barring handguns.

"This is not carrying a machine gun on the streets," says LEVY. "It's about having a garden-variety handgun in your own home."

HEALY adds that "the right to keep and bear arms includes the right to defend your property, your family, and your life. No government should be permitted to take that right away."

In Ohio, a Seneca County judge has ruled that the stateís concealed-weapon ban is unconstitutional, dismissing felony charges against a woman who said she hid a gun under her seat because she feared for her safety after being raped twice.

The judge said the concealed-weapon law infringes on citizens' right to defend themselves.

Judge MICHAEL KELBLEY's ruling marks the second time in a little over a year that a county court has ruled against the concealed-weapon law. A Hamilton County Common Pleas judge declared the law unconstitutional in January, 2002, in a case supported by the Second Amendment Foundation.

In New York, lawyers suing gun manufacturers in Brooklyn federal court have asked a judge for a bizarre order that would force two longtime firearms industry lawyers to testify about whether the lawyers themselves undermined proposals for gun safety.

Such unusual requests **to make lawyers testify** are not supported by the law. <u>A turncoat lawyer</u> who went from Second Amendment supporter to gun control advocate has filed an affidavit in San Diego, California, Superior Court, saying the firearms industry knew some gun dealers illegally sold guns to criminals.

Whether the case will get to trial is to be decided by Judge VINCENT DI FIGLIA.

The Rutherford Institute has filed suit in the Superior Court of New Jersey in Essex County on behalf of HAMADI ALSTON, a third-grader in Irvington, N.J. for using an L-shaped piece of paper as a gun in a pretend game of "cops and robbers." The complaint attacks baseless zero tolerance policies at schools.

The U.S. Supreme Court has sent an important gun case back to the Illinois trial court to reconsider whether the government has to make public the details in a firearms database. Congress passed a spending bill that prevents the BATF from spending money to release the data, so the high court canceled arguments. The City of Chicago wants the data for its lawsuit against gunmakers. The Supreme Court could get a chance later to revisit the issue.

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ILLINOIS DEMOCRAT TARGETS .50-CALIBER REVOLVER FOR BAN

Just days after Smith & Wesson introduced its powerful new hunting revolver, the 500 Magnum, Chicago Rep. DANNY DAVIS (D-IL) said he would seek a nationwide ban on the product.

DAVIS rejected the gun as being for hunting, saying it was made only ito kill people.i

DAVIS said that people in the Chicago gang culture would "acquire this weapon" for killing and brag, "I've got the most powerful piece on the block."

DAVIS ridiculed those who live in rural areas for their support of gun rights, implying that city dwellers are superior: "Those of us who live in big, urban centers have a different take than some people who may live in different environments."

GUN CONTROL GROUP SEEKS BAN ON SNIPER RIFLE

The Violence Policy Center is now using "national security" in its ongoing effort to ban .50-caliber rifles. The VPC has published a 32-page report on **the potential threat to aircraft of the rifles**, which are purchased primarily by the military and law enforcement for sniper use, but are also bought by civilians, mostly competitive sports shooters.

The Transportation Security Administration, however, does not see the rifles as a major threat. TSA chief spokesman ROBERT JOHNSON said, "We are aware of it. We just don't feel it is high on the list of potential dangers."

RONNIE G. BARRETT, a manufacturer, said the idea of shooting down a moving plane with the rifle was ibig time ridiculousi because a gunman would have to aim above the plane, to take account of gravity's effect on the bullet as it traveled, and then the plane would not be visible in the scope, making aiming all but impossible.

REP. GEORGE NETHERCUTT WRITES PRO-GUN RIGHTS PROVISION IN SPENDING BILL

Before the Supreme Court could rule on the issue, congressional Republicans included a provision in the mammoth spending bill to keep the government from releasing the names of gun owners and dealers (see last item on Page 2).

The provision was written by Rep. GEORGE NETHERCUTT (R-WA).

The city of Chicago is suing the gun industry and asked for the names of buyers and sellers under the Freedom of Information Act. The 7th Circuit Court of Appeals backed the city, but the Bush administration appealed to the Supreme Court.

Rep NETHERCUTT said, "This data must remain protected to ensure the integrity of criminal investigations, but unfortunately a recent U.S. Circuit Court decision could compel law enforcement agencies to disclose this data, contrary to Freedom of Information Act law, privacy protections and Supreme Court precedent in this area. This amendment is the only alternative to jeopardizing thousands of criminal cases."

NRA USING TORT REFORM TO FIGHT GUN CONTROL

A bill that would protect gun dealers and manufacturers from civil liability suits when a firearm they sell is used to commit a crime last year got 47 senators and 232 House members to cosponsor.

The gun tort reform bill never went to the full House for a vote, but the National Rifle Association says it will reintroduce the bill again this year.

JUSTICE DEPARTMENT IN THE NEWS

Federal gun prosecutions have jumped 45 percent under Attorney General JOHN ASHCROFT, a Syracuse University research project shows.

Also, the recent takeover of the Bureau of Alcohol, Tobacco and Firearms by the Justice Department has gun owners expecting more prosecutions of criminals and less tendency to blame guns for what criminals do.



ARIZONA LAWMAKERS MOVE TO BOLSTER GUN OWNER RIGHTS

The Arizona House has voted to reduce the penalty for carrying a concealed weapon without a permit, making it a petty offense punishable by a fine of \$50 or less. The bill was sent to the Senate.

Another gun measure, House Bill 2320, would limit gunfree zones, where people must not take their firearms. The bill would make those who establish a gun-free zone liable for damages if someone is forced to check their firearm and then a crime occurs.

ARKANSAS LEGISLATURE PASSING ODD MEASURES

While the Arkansas House approved and sent on to the Senate legislation that, if approved, would expand allowable concealed carry locations to include parks and restaurants that serve alcohol, the Senate approved **special rights allowing federal judges (and only feds) to carry concealed handguns without a permit**.

The House bill removes a prohibition on carrying concealed weapons in parks and into restaurants where alcohol amounts to no more than 40 percent of the sales. The bill's sponsor, Rep. SID ROSENBAUM (R-Little Rock), said, "The bill simply removes the park and restaurant restrictions, but does not allow permit-holders to carry weapons into bars."

The Senate bill would allow federal trial judges, bankruptcy judges and magistrates throughout Arkansas to carry concealed handguns in court if the chief district judge certifies that they have taken a state-approved handgun safety course.

Gun owners who support concealed carry laws were offended by such special rights being extended to an elite class of citizen *instead* of equally to all.

CALIFORNIA CITIES: ONE FOR GUN RIGHTS, ONE AGAINST

The Los Angeles City Council is considering a request from City Attorney ROCKY DELGADILLO to ban the new .50-caliber Smith & Wesson 500 Magnum revolver.

While DELGADILLO asserted that the new firearm would be used "for hunting human beings," several law-enforcement officials said the size, weight, and cost of the revolver would discourage criminals from using it.

Meanwhile, northward in Modesto, a city council majority rejected a proposed ban on concealed weapons from council meetings. Mayor CARMEN SABATINO's proposed ban died when none of the other five council members seconded his motion.

CONNECTICUT LEGISLATORS CONSIDER GUN ÌFINGERPRINTÎ DATABASE

A ballistic imaging database is being proposed by lawmakers in Connecticut. The technology, which has shown to be useless in crime detection by two California Attorney General-ordered studies, is being reported as a good crime fighting tool by a Hartford TV station.

RALPH SHERMAN of Gunsafe, a Connecticut gun owners' group, said, "New York and Maryland already have this and they've never solved a crime with them."

COLORADO A HOTBED OF GUN ISSUES

A statewide concealed-weapons measure may finally become law this year, after a decade of work to pass it. Senate Bill 24, which has passed, creates a statewide standard to define how concealed carry permits should be issued, which is now so fragmented that some county sheriffs and police chiefs refuse to give them out while others provide them to almost anyone who asks.

The measure now goes to the House.

The Senate also approved a statewide measure that would allow local communities to regulate firearms as long as they do not try to prohibit them.

Sen. JIM ISGAR (D-Hesperus) amended the bill to allow communities to ban open carrying of firearms in specific buildings and open areas.

However, Denver Mayor WELLINGTON WEBB urged the city council to fight any new gun law if it erodes the cityis power as a home-rule government. The Senate-passed bill would overturn Denver's present ban on so-called assault weapons.

The bill now goes to the House.

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ILLINOIS BUSY WITH GUN LEGISLATION

Democrat Gov. ROD BLAGOJEVICH has endorsed Chicago Mayor RICHARD DALEY's gun control package to the legislature - with one major exception: raising the price of the state firearm ownersí ID card.

IN THE STATES

However, BLAGOJEVICH is all for DALEY's qun show ban and SPECIAL REPORT | ballistics testing database proposals.

In other news, the Illinois State Rifle Association applauded the House Criminal Law Committee's passage of a bill to prevent unscrupulous individuals from selling quns while avoiding the scrutiny of federal licensing officials.

ISRA reported that HB 1377 carefully defines the targeted individuals and does not affect lawful firearm transfers between qualified private parties.

MINNESOTA DEBATES GUN-FREE ZONES

While the state legislature is likely to pass a broad concealed carry law this year, language was inserted to ban permit-holders from carrying in public schools, but rejected a bid to ban them in the cities of St. Paul and Minneapolis.

At the same time, Duluth city councilors banned handquns from city-owned buildings, even for concealed-carry permit holders.

MISSOURI SENATE PASSES BILL BANNING SUITS AGAINST GUN MAKERS

The Senate has given initial approval to a bill barring governments from suing qun manufacturers. Sponsor Senate President Pro Tem PETER KINDER said it is intended to stop a lawsuit filed by the city of St. Louis.

"This bill will send an important message that we don't want these frivolous lawsuits in Missouri," said KINDER. The bill requires a final Senate vote before moving to the House for consideration.

NEVADA SENATE PANEL SHOOTS DOWN LOCAL GUN BAN PROPOSAL

The Senate Government Affairs Committee rejected a bill to let local governments regulate unconcealed firearms at special events on public property.

ART DIXON of the Nevada State rifle and Pistol Association said it "could kill all qun shows and Old West events." Lawmakers said police already have the right to post a sign at any gathering on public property that weapons are prohibited.

NEW MEXICO WORKING ON PRO-GUN BILLS

The Senate has passed SB 23, Right to Carry legislation on a 32-9 vote. The House version of Right to Carry has been introduced by Rep. JOHN HEATON (D-55). Sen. MANNY ARAGON (D-14) introduced SB 788, to ban reckless lawsuits against gunmakers.

NORTH DAKOTA PUTS COMMON SENSE IN ZERO TOLERANCE LAW

The House has approved a bill to prevent mandatory expulsion for a student in a school weapons violation case. The bill allows school officials to reduce penalties in cases of accidental violations or if the student didn't mean any harm. The bill went to the Senate for consideration.

OHIO CONCEALED CARRY BILL GAINING STEAM

Even though Gov. BOB TAFT has vowed to veto it, Ohio's House Speaker LARRY HOUSEHOLDER says he expects his chamber to pass a bill that would have county sheriffs grant permits allowing people to carry concealed weapons.

UTAH MEASURE ALLOWS GUNS ON CAMPUSES

Senate Bill 108 needs only the Senate's consent on a House amendment and the governor's signature to allow concealed carry-permit holders onto school grounds.

COUNTY IN VIRGINIA ALLOWS GUNS IN PARKS

Henrico County's Board of Supervisors has repealed the decades-old ban on permit holders carrying concealed handguns in county parks.

CANADA GUN REGISTRY WOES

Amid headlines about the Royal Canadian Mounted Police searching the Vancouver Island home of a veteran firearms instructor for a non-existent gun, and horrifying reports that the names and addresses of gun owners were found in the garbage dumpster of the Canadian Firearms Centre, Justice Minister Martin Cauchon asked Parliament to approve **another \$170 million for the wildly over-budget federal firearms registry**.

The registry price-tag, which was originally supposed to cost taxpayers \$2 million, now stands at nearly \$1 billion.

Further, an Indian uprising is brewing in one of Canada's First Nations, the Tsilhquot'in Nation, which has

started **issuing its own firearms licenses** in a direct challenge to Ottawa's firearms' registry.

Chief Ervin Charleyboy says people on the six Tsilhquot'in reserves are worried their guns will be taken away from them if they register with the federal government. So they will sell their own licenses instead of the legally-required federal licenses. The Canadian government is losing control of its people over gun registry.

The canadian government is losing control of its people over gun registr

RUSSIAN GROUP: ALLOW THE POPULATION TO ARM ITSELF AGAINST TERRORISM

A Russian pro-gun group, Civil Arms Union, or Soyuz Gradanskoye Oruzhiye, is lobbying to have gun laws repealed. Their case is bolstered by arguments that last fall's murderous siege of Moscow's Dubrovka Theater by armed Islamic terrorists could have been stopped "if one in 10 potential hostages were armed."

Andrei Nasomov, a supporter of the arms union, said, **iIf we want our society** to be democratic, this is one of the rights we have to have.i

The Interior Ministry, which oversees the country's police force, is negative. Critics claims it is because the ministry wants to preserve its profitable private security business.

PHILIPPINES SUPREME COURT GIVE HOPE TO END GUN BAN

The Philippine Supreme Court has ordered the National Police to **justify its ban on the carrying of firearms outside of residences**. Officials must reply before the high court will consider issuing a Temporary Restraining Order.

The order arose from a civil suit filed by former solicitor general Francisco Chavez seeking to have the ban declared null and void for being "unconstitutional and invalid."

UNITED STATES: PROBLEMS WITH THE ARMING PILOTS PROGRAM

The Bush administration seems bent on **interfering** with the mandate from Congress to put guns in the cockpits of commercial aircraft.

Transportation Security Administration (TSA) Undersecretary Admiral James Loy seemed at first to be taking the congressional order to create an armed Flight Deck Officer program as if it were optional.

Then when the program was initiated on a volunteers-first basis, stupid rules appeared, including a requirement to keep a pilot's gun in a locked box any time the cockpit door was open.

Then came the requirement that pilots submit to a TSA psychologist for mental examination, **just another way to discourage pilots from the program**. The Federal Aviation Administration already requires airline pilots to undergo psychological examination every six months to keep their licenses.

Then came a shocking revelation about the law itself: a last minute modification to armed pilot legislation **excluded airline pilots who fly for cargo carriers**.

Anyone familiar with aviation knows that cargo planes can do just as much damage as passenger airliners. And it would be much easier to hijack a cargo airliner:

- There's never a Federal Air Marshal on cargo flights.
 - There's no hope of passenger intervention.

• Cargo ramps don't have the level of security present at a passenger terminal.

Fortunately, the Airline Pilots' Security Alliance is busy gaining bipartisan support for legislation to include cargo pilots in the TSA armed pilots program.



GUN NEWS TICKER - QUICK TAKES ON THE NEWS

•Detroit, Michigan: Detroit's two largest daily newspapers, the Detroit Free Press and Detroit News, will no longer accept advertisements for handguns in the classified sections of the newspapers. They will continue to accept ads for long guns, - rifles and shotguns.

•Madison, Wisconsin: Newspapers here will keep accepting classified ads for guns. The Capital Times and Wisconsin State Journal have no intention of caving in to demands from the anti-gun "Wisconsin Anti-Violence Effort" (WAVE).

•Harrisonburg, Virginia: Blue Ridge community College has amended its policy to allow students to legally carry concealed weapons on campus. The old policy was challenged by Dave Briggman, a student and member of the Harrisonburg-Rockingham County Libertarian Party.

●Los Angeles: Organizers of the Great Western Gun Show will receive a \$1.6 million settlement from Los Angeles County in a lawsuit claiming that a prohibition of the show on county fairgrounds violated their First Amendment rights. The county settled in return for a promise the show would not return to the Fairplex in Pomona. The show's organizers have pledged to hold the event at a new venue.

•Albuquerque, New Mexico: The federal government criticized Los Alamos National Laboratory for not keeping an adequate inventory of firearms it uses in tests. An Energy Department report said lab officials could not accurately account for more than 1,600 machine guns, pistols, rifles and other firearms. Lab officials said they have corrected the problem and no guns were out of their "positive control."

•Syracuse, New York: An appeals court has upheld a lower court ruling that the DeWitt Fish & Game Club operated in conformity with applicable town laws and dismissed the lawsuit of anti-gun neighbors who wanted the shooting range shut down and all lead debris from decades of shotgun and rifle practice cleaned up.

•Winston-Salem, North Carolina: City alderman Vernon Robinson annoyed some anti-gunners when he told a disaster-relief audience that they needed to stock up not only on food and water in case of a terrorist attack, but to "keep guns in your homes to protect from looters." Several objected, and one even said he would invite his needy "brothers and sisters" to take his food and water instead of shooting them.

•Smiths Falls, Ontario, Canada: The Upper Canada District School Board has removed the word gun from all spelling tests in its schools because an anti-gun mother complained about it. Amanda Sousa said, "The word gun is synonymous with death." So the word gun is removed from First Grade vocabulary in Canada. Officials are considering whether to bring it back.

•Honolulu, Hawaii: People applying for gun permits in Hawaii were rejected at a significantly lower rate (1.5%) than the national average (2.3%) the state attorney general's office recently reported. The most common reason for rejection was court-ordered alcohol abuse assessment following a conviction for drunken driving, which is considered a disqualifying form of mental health treatment. A DUI conviction by itself is not a disqualifying factor.

•Manchester, New Hampshire: Despite the fact there were only 36 homicides in New Hampshire in 2000 and 2001, and only 11 of those were by gunshot, two federal grants are being awarded there: \$320,000 for a public relations program and crime research, and another \$300,000 for a task force to reduce the use of guns in domestic violence. Maybe these same feds are sending millions to fight sunburn in Mammoth Cave.

•Brooklyn, New York: A notoriously left-wing publisher, Soft Skull Press, has announced it will republish the discredited anti-gun book, Arming America: The Origins of a National Gun Culture, by former Emory University professor Michael Bellesiles. Bellesiles was found by a panel to have used deception and error to make his case that early Americans didn't own many guns. He was forced to return the Bancroft Prize awarded the book before it was exposed as violating standards of truth.

Parting Shot

OUTRAGE!

Brooklyn, New York's District Attorney Charles J. Hynes, is committing one of the most outrageous miscarriages of justice in living memory.

He's prosecuting an innocent man who used a gun to save his toddler from a thug who broke into his home.

Here are the facts: Early one morning last December, Ronald Dixon was asleep in bed when he heard a noise in the hallway of his two-story house in the Canarsie area of Brooklyn.

When he peered sleepily out his bedroom door, Mr. Dixon saw a man at the top of the stairs heading toward the bedroom of his 2-year-old son, Kyle.

Mr. Dixon jolted awake and grabbed a 9-millimeter pistol that he kept in a closet, walked toward the man and asked him what he was doing there.

This man, Mr. Dixon said, ran at him, screaming.

Dixon shot the man twice, wounding him seriously, but not fatally.

Who is this shooter? He's 27, a Navy veteran who works two jobs as a computer specialist to support his girlfriend and their two small children.

Who is this intruder? He's Ivan Thompson, 40, a career scumbag with a record of burglaries and other crimes longer than most rapsheets. If he gets convicted this time, he will reside in a clean, well-lighted facility for many years to come.

So far, so good, you say?

Right. But there's this detail: Mr. Dixon's gun was unlicensed in New York. He obtained the gun in Florida and was in the process of registering it in New York. So the gun was illegal. Mr. Dixon doesn't dispute that.

And Brooklyn happens to have Charles J. Hynes for its district attorney. Mr. Hynes has more grip on the letter of the law than its spirit. He thinks prosecuting anyone with an unlicensed gun is the glory of law enforcement.

Yes, D.A. Hynes knows Dixon did the right thing. He even told a newspaper, "No question, he had the right to shoot the guy in his house."

No, D.A. Hynes doesn't know justice. He wants Ronald Dixon to do jail time. Absolutely. He told the same newspaper, "But he had no right to have an illegal weapon."

So he's demanding Mr. Dixon do jail time. If convicted of the misdemeanor charge against him, Mr. Dixon could get a year in prison. Hynes offered Dixon a plea bargain that would involve four weekends, tops, on Rikers Island.

Dixon is having none of it. Pleading guilty would leave him, unfairly, with a criminal record that could destroy his career.

Dixon's lawyer, Andrew Friedman, has asked a Criminal Court judge in Brooklyn to toss out the charges. A decision was put off until next month.

After an article about the case appeared in *The New York Daily News*, Mr. Dixon became a star of the talk show circuit, something he's not entirely at home with.

Support for Dixon's cause has come from many quarters, from Second Amendment advocates to judges in off-the-record remarks.

Mr. Dixon's lawyer made the real point. "You have to allow for exceptions," Mr. Friedman said. "I don't think the D.A. will be sending a message that it's O.K. for everyone to carry a gun if he were to step back and make an exception in this unique case. Why is the D.A. not exercising his discretion, like he does in other situations, not to prosecute?"

We'll suggest a reason: District Attorney Charles J. Hynes doesn't know the difference between law and justice.

Evidently, thousands of Dixon supporters do.

Alan M. Hottliel

Jorge d.