

The Gottlieb-Tartaro Report

THE INSIDERS GUIDE FOR GUN OWNERS

Issue 123

March, 2005

Dear Subscriber,

Congress is immersed in gun rights issues. First, a new law to protect the firearms industry from unjust lawsuits intended to ruin responsible businesses:

Rep. CLIFF STEARNS (R-FL) and Rep. RICK BOUCHER (D-VA) have introduced HR 800 with **strong bipartisan backing from 92 co-sponsors**. In the Senate, S 397 has a total of 27 co-sponsors backing the "Protection of Lawful Commerce in Arms Act," introduced by Sen. LARRY CRAIG (R-IS) and Sen. MAX BAUCUS (D-MT).

The bill would **outlaw predatory lawsuits** brought against a segment of the manufacturing industry - the firearms business - with the intention of bankrupting it. Cities, counties, organizations and individuals have brought lawsuits blaming manufacturers for the acts of criminals who use guns to harm others.

The bill has gained the support of organized labor, whose members' jobs are endangered; the U.S. Chamber of Commerce; the National Association of Manufacturers and others.

LAWRENCE G. KEANE, senior vice president and general counsel of the National Shooting Sports Foundation, said, "This legislation would not stop legitimate lawsuits by someone who is injured by a defective product or against any business that knowingly breaks the law."

Ironically, **Sen. DIANNE FEINSTEIN (D-CA)** has resurrected the issue that killed the lawsuit bill last year. She says she will introduce a new bill seeking to **reinstate the federal "assault weapons" ban** that expired in September after 10 years on the books.

Her bill will meet stronger opposition than last March, when it passed 52-47 as an amendment to a firearms industry protection bill similar to this year's S 397. The "poison pill" amendment caused the Senate to reject the bill.

November's election increased the 100-member Senate's number of Republicans from 51 to 55, and **there are at least four new solid votes against Feinstein's bill**.

In the House, Speaker DENNIS HASTERT (R-IL) and Majority Leader TOM DeLAY (R-TX) have said **they won't let the renewal legislation come up for a vote**.

New Jersey's two Democrat Senators JON CORZINE and FRANK LAUTENBERG plan to introduce a bill that would make it illegal for anyone, except a police officer or military official, to purchase or use the Five-SeveN pistol made by FN Herstal of Belgium that **allegedly fires bullets capable of penetrating a bullet-proof vest. These bullets are already banned by federal law**.

CORZINE and LAUTENBERG are acting on a **crusade of the Brady Campaign to Prevent Gun Violence**. Last month, the Brady Campaign released a videotape showing the Five-SeveN firing bullets that penetrated a police Kevlar vest.

The bill against the Five-SeveN, **being called an "assault pistol,"** would also prohibit the gun and bullets from being made in the United States.

Rep. PATRICK KENNEDY (D-RI) recently said **colleagues in Congress are mentally ill** if they don't support the "50 Caliber Sniper Rifle Reduction Act" introduced by Rep. JIM MORAN (D-VA). It would virtually ban ownership of .50 BMG rifles.

JOHN BURTT, chairman of the Fifty Caliber Institute, refuted KENNEDY's hype, saying **the guns have legitimate sports uses and legal owners aren't criminals**.

Also in this issue: ● *California lawsuit dismissed* ● *Doctors to arm in India*
● *Florida self defense: no duty to retreat* ● *Russian imports worry Remington workers*
● *New York City opposes frivolous lawsuit bill* ● *Self defense on the rise in our Page Eight "Parting Shot"*

**AT THE
FEDERAL LEVEL**

CALIFORNIA ANTI-GUN LAWSUIT DISMISSED

The Court of Appeals of the state of California has **upheld the dismissal by a state superior court of an anti-gun lawsuit** filed by several cities and counties.

The suit claimed gun makers engaged in unfair trade practices which resulted in criminal misuse of firearms, creating a **"public nuisance."**

The lawsuit was filed by Berkeley, Compton, Inglewood, Los Angeles, Sacramento, San Francisco and West Hollywood, as well as the counties of San Mateo and Alameda. A lower court judge dismissed the suit in March 2003.

The appeals court decision was unanimous. Another predatory lawsuit down.

APPEALS COURT REFUSES TO STRIKE DOWN DISTRICT OF COLUMBIA ANTI-GUN CODE

The District of Columbia Court of Appeals has ruled **2-1 against the gun-rights plaintiffs** in the Second Amendment case of Seegars v. Ashcroft. The case involved five District of Columbia residents who argued that **the District's anti-gun regulations have the effect of preventing DC residents from possessing handguns under the Second Amendment**, even in their homes.

**IN THE
COURTS**

The District court ruled in this case on January 14, 2004 and denied the relief sought - **to overturn the Code regulations.**

The appeals court upheld the lower court on the grounds that **the plaintiffs lack standing to sue because they hadn't been prosecuted** under the DC Code, so their Second Amendment rights weren't violated.

In a dissenting opinion, Judge David B. Sentelle disagreed, writing, "The record offers essentially undisputed evidence of the appellants' intent to engage in gun-related conduct prohibited by the challenged Code provisions. Appellants adequately allege and argue that this conduct is protected by the Second Amendment to the United States Constitution."

Sentelle cited a Supreme Court ruling that noted, "When the plaintiff has alleged an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution thereunder, **he should not be required to await and undergo a criminal prosecution as the sole means of seeking relief.**"

Stephen Halbrook, lead attorney for the plaintiffs, said, "This is not over yet." Another similar case is ready to go ahead and Congress is still considering legislation that might strike down the 29-year-old ban. Last year, the House voted 250-171 to strike the ban down. Now it's up to the Senate.

GUN MAKER LOSES \$24 MILLION APPEAL

A California state appeals court has **upheld a jury verdict** that held Costa Mesa gun maker, Bryco Arms Inc. responsible for **\$24 million in damages** to Brandon Maxfield, who was accidentally shot and paralyzed by his baby sitter in 1994 when he was seven years old. Bryco declared bankruptcy after the award.

STUDENT LOSES COURT CHALLENGE ASKING FOR YEARBOOK PICTURE WITH SHOTGUN

A federal judge has rejected Londonderry, New Hampshire High School senior and shooting enthusiast Blake Douglass' request for a preliminary injunction **to compel school officials to publish his submitted yearbook photo**, which features a broken-open **shotgun** slung over his shoulder.

Douglass charged the refusal to publish his picture was unconstitutional viewpoint discrimination, but the judge said student editors made the decision, not the state - meaning school officials - **so the Constitution doesn't apply.**

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BRAZILIAN PUBLIC OPINION SHIFTING ON ANTI-GUN PROPOSAL

A gun ban plebescite scheduled for October 2 **is losing support**. A strong "yes" vote would direct the legislature to change current regulations to new rules that would **outlaw virtually all private ownership of handguns**.

However, in the past year, the overwhelming 73.6 percent support for the gun ban shown in March 2004 polls **has fallen dramatically** to only 48.0 percent "yes," according to February 2005 polls conducted by Instituto Sensus. Results were based on interviews with 2,000 Brazilian adults, conducted from February 15 to 17, 2005. Margin of error is 3 per cent.

AROUND THE WORLD

DOCTORS IN INDIAN STATE GET GUN LICENSES

Doctors in Jharkhand, a new state in India created in 2000 from the larger state of Bihar, will **soon get licenses to carry firearms**. The nation's Home Ministry, **concerned over increasing kidnappings of medical practitioners** in Jharkhand and Bihar, has instructed all deputy commissioners to **immediately act** on applications of private and government doctors who have asked for gun licenses.

Jharkhand has a high poverty rate and officials fear that **doctors have been targeted as potential sources of ransom money** by kidnapping rings.

UNITED KINGDOM PLANS TOTAL BAN ON FAKE GUNS

Having virtually **banned real guns**, the British government's new law and order chief Charles Clarke has ordered officials **to see how replica firearms can be banned**.

A senior Home Office official told the *London Mirror*, "These weapons are terrifying. If one is pointed at someone, they have no idea whether it is real or imitation."

Officials justify the plan by citing statistics: 2,950 firearms offenses involved replica weapons in the 12 months to September 2004, up from 1,990 the previous year.

Clarke claimed that toys and acting props would not be included in the ban.

CANADA'S GUN REGISTRY DIDN'T PREVENT RCMP KILLINGS

Four Royal Canadian Mounted Police officers, along with 46-year-old suspect James Roszko, **were recently killed** during what was supposed to have been a standard raid on a marijuana growing operation in the province of Alberta.

A reader sent a poignant and pointed letter to the editor of the *Globe & Mail*, Canada's national newspaper: "It was well known that Jim Roszko possessed an arsenal of guns. Furthermore, Canada's famously expensive gun registry should have told the RCMP the same. Why, then, was the property not entered by a properly forewarned emergency-response team?"

"Wasn't the expense of the gun registry justified as a measure to prevent events of this nature? Was the gun registry even searched before entering the property?"

Good questions for everyone as the world mourns for the brave officers.

NEW GUIDELINES ALLOW BRITS TO KILL BURGLARS WITH "REASONABLE FORCE"

The United Kingdom's Association of Chief Police Officers and the Crown Prosecution Service have published **guidelines for householders** informing them **they can kill a burglar** as long as they use "reasonable force" and act "honestly and instinctively" in "the heat of the moment."

Tory leader Michael Howard called for **a change of law to eliminate confusions** that have seen victims arrested instead of burglars, but Prime Minister Tony Blair said **householders' legal rights of self defense are "crystal clear."**

The *London Mail*, however, conducted an online survey of its readers that showed **72 percent said the new guidelines "clarifying" the present law are still confusing**. The newspaper concluded that a majority of British people are unclear how far a householder can go to protect their property.

ARIZONA LAWMAKERS CONSIDER THREE PRO-GUN BILLS

SB 1363, smeared by media as the "guns in bars" bill, has passed the Senate Judiciary Committee by a vote of 2-5. The bill will make Arizona one of 30 states that allow law-abiding citizens to carry firearms for self-defense in restaurants and other establishments that are licensed to serve alcohol. The bill failed by one vote last year, but an added provision forbidding armed customers from drinking alcoholic beverages won the vote.

IN THE STATES

SB 1271, a bill establishing a voluntary, semester-long course in firearms safety and proficiency for students in public and charter schools, passed the full Senate by a vote of 30-0. It has moved to the House for committee action.

HB 2325 reduces the initial concealed weapons training from 16 to 8 hours and makes the permit renewal process more convenient. The bill is before the full House.

CONNECTICUT ANTI-GUN BILLS BEFORE COMMITTEE

A public hearing was held before the state Senate's Public Safety Committee on SB 1133, "An Act Revising Statutes Relative to Firearms." This extensive bill amends eight gun-related sections of Connecticut's general statutes with some highly objectionable provisions.

For example, anyone who knowingly transfers a firearm to a prohibited person will be held strictly liable for injury or death by the use of such firearm. This clause sounds superficially protective, but has no other purpose than to provide a basis for frivolous lawsuits and accusations of "straw purchases."

Other negative provisions, such as expanded authority for officials to declare an individual a "person prohibited," led critics to nickname this measure the "State Police Omnibus Anti-Gun Bill."

SB 714 is also pending before the same committee. It would ban the sale of .50-caliber rifles.

FLORIDA ACTS TO FURTHER LEGALIZE SELF DEFENSE

HB 249, "Protection of Persons and Property," a bill giving people the right to shoot an attacker in a public place without fear of being sued or charged with a crime, has passed the House Judiciary Committee. The bill expands current legal doctrine, which allows people to defend themselves with deadly force only if attacked in their homes or cars - a common-law principle known as the "castle doctrine" (your home is your castle).

HB 249 states that a person "has no duty to retreat" if attacked in a public place. The bill is now in the Judiciary Appropriations Committee.

A similar bill, SB 436, "Relating to Protection of Persons / Use of Force," unanimously passed the Senate Judiciary Committee. It applies only to homes or cars, but also removes the duty to retreat; it creates the presumption that an attacker or intruder intends to do great bodily harm, justifying the use of deadly force; it immunizes victims who injure or kill intruders from prosecution or civil suit.

GEORGIA BILL WOULD ALLOW LAWFUL GUNS IN RESTAURANTS

HB 193, a bill to allow licensed gun owners to carry their firearms into restaurants, has had its second reading in the Georgia General Assembly's House of Representatives. Restaurants under the bill are establishments that derive more than half their annual revenue from sale of food for consumption on premises. Observers say the bill has little chance of passage this year.

ILLINOIS LEGISLATURE A GUN RIGHTS BATTLEGROUND

Gun rights advocates are lobbying more than 30 pro-gun bills in the Illinois House of Representatives, while urban anti-gun lawmakers are pushing measures to limit handgun purchases and ban many semi-automatic firearms.

More than 200 gun rights advocates recently rallied at the Statehouse, in part to oppose Chicago Mayor Richard Daley's anti-gun legislative package.

Illinois Democrat Governor Rod Blagojevich supports Daley's bills, but is wary of what promises to be a bare-knuckle brawl on the legislative floor.

IOWA GUN SHOW BILL PUSHED BY ANTI-GUN GROUP

Iowans for the Prevention of Gun Violence have convinced Rep. Don Shoultz (D-Waterloo) to introduce House File 161, a bill that makes it a felony to sell a gun at a show on state property to someone legally barred from having a gun.

IN THE STATES

The measure would require background checks at gun shows at the Iowa State Fairgrounds, where off-duty law officers work during shows to monitor sales.

INDIANA LAWMAKER INTRODUCES GUNS IN CARS BILL

Rep. Eric Koch (R-65) has introduced HB 1692, an act that prohibits businesses from banning legally stored firearms in employees' vehicles on company property. The bill has been reported out of the Public Safety and Homeland Security Committee.

Also, SB 219, a bill to improve Right-to-Carry permits processing, sponsored by Sen. Johnny Nugent (R-43), was passed out of the Senate by a vote of 48-2.

TWO ANTI-GUN BILLS ON MAINE AGENDA

LD 310, a bill mandating a 10-day waiting period for persons under 22 years old who purchase firearms in Maine, and LD 344, which would amend the current preemption statute by allowing local governments to regulate the possession of firearms on public property, are before the Joint Criminal Justice & Public Policy Committee.

MISSOURI BILLS SET TO PROVIDE CONCEALED CARRY PERMIT PROCESSING FUNDS

Companion bills SB 157 and HB 365, now moving through their respective chambers, will allow sheriffs to use money from the "County Sheriff's Revolving Fund" to cover costs of processing carry permit applications.

The Missouri Supreme Court ruled that the state's new concealed carry law was an unconstitutional unfunded mandate. These bills should remedy that problem.

NORTH CAROLINA WANTS TO EXTEND PERMIT DEADLINE FOR MILITARY

The Senate Judiciary Committee is considering SB 109, to allow military personnel deployed to Iraq 90 days after the end of their deployment to renew concealed handgun permits that expire during deployment.

An existing law already waives deadlines for expired driver's license while military personnel are deployed. Sen. Scott Thomas (D-Craven) brought his bill to relieve serving military in Iraq about their concealed carry permits.

OKLAHOMA BILL TO REMEDY GUNS-IN-CARS LAW

House Bill 1243 would provide legal protection to gun owners and their employers if a gun is taken from an employee's vehicle and used to commit a crime. Oklahoma legislators passed a law last year allowing workers to have guns in their vehicles at work sites, but several companies have objected and are challenging the law in court. HB 1243 is designed to remedy liability questions.

OREGON FRIVOLOUS LAWSUIT BILL REWRITTEN TO AVOID CONSTITUTIONAL SNAG

HB 2373 and companion bill SB 428 eliminate civil liability of gun makers and sellers for damages resulting from unlawful use of a firearm, but had to include a number of exceptions to avoid conflict with the Oregon Constitution's right to take legal action to seek compensation for injuries. The corrected bill is expected to pass court muster.

WASHINGTON STATE BESET WITH ANTI-GUN BILLS

Five serious anti-gun bills have been introduced in the Democrat-controlled House, including a proposal to impose a broadened "assault weapons" ban on the state, a bill to require background checks at gun shows, and a .50-caliber rifle ban, and a 24 cents per ounce excise tax on lead shot.

Urban Democrats also introduced measures to require locked storage for firearms and to ban lawful concealed firearms from the state Legislative Building.

NEW HAMPSHIRE GUN MAKER GETS BIG GOVERNMENT ORDER

SiGARMS of Exeter, New Hampshire has won a five year, \$23.7 million contract to supply up to 65,000 pistols to the U.S. Department of Homeland Security.

The firm competed against Beretta, Smith & Wesson, Springfield Armory, Heckler & Koch and Glock to win the contract.

INDUSTRY REPORT

The selection process was grueling. SiGARMS vice president for government and military sales, Pete Kujawski, said his company went through dozens of separate evaluations and fired off more than three million rounds of ammunition using 46 competitive gun models.

Each individual firearm was required to shoot a minimum of 10,000 rounds and each pistol was eventually measured against 50 criteria. The selection process took more than four months to complete.

The guns were tested in high and low temperatures, and subjected to sand and salt water to assure durability and operability.

The winners were three models of Sig Sauer pistols, the P229, P226 and the P239. Prior to being selected by Homeland Security, these firearms were already in use by the U.S. Secret Service, the ATF, State Department diplomatic security agents, the U.S. Army Military Police and the Navy Criminal Investigation Service.

REMINGTON EMPLOYEES WORRY ABOUT NEW RUSSIAN IMPORTS

Remington Arms Company, Inc., has formed a new division that sells an imported line of low cost break-action shotguns from Biakal, Russia.

The division, Spartan Gunworks by Remington, has employees at the Ilion, New York factory worried that it could be the beginning of the end for their plant and its 1,000 American jobs.

The Spartan product line includes 17 lower-cost versions of single shot, side-by-side and over-and-under shotguns.

Remington guns made in Ilion and other U.S. factories retail between \$500 and \$700. The new Russian imports sell for about \$400.

The new line was added to expand choices for the consumer – not as a source of internal competition, said Linda Powell, senior press relations manager at Remington's headquarters in Madison, N.C.

Remington's Ilion factory is the largest employer in Herkimer County, with a \$35 million annual payroll.

GUN MAKER EXPANDS TO NEVADA AFTER CALIFORNIA RULING

Jimenez Arms, based in Costa Mesa, California, has applied for a Henderson, Nevada business license.

Critics say the move is in response to a California order that it stop producing the JA-NINE, a 9mm pistol the Attorney General declared unsafe, based on third-party tests commissioned by an anti-gun group.

Paul Jimenez, owner of the firm, said his company had planned the move months before the AG's ruling. He also asserted that California officials were out of line for accepting test results from a hostile advocacy group without verification.

An anti-gun group, called Brandon's Arms, had tried unsuccessfully to buy the assets of bankrupt Bryco Arms, losing out to Jimenez.

The group's gun testing and lobbying of the Attorney General to ban the pistol has the appearance of a revenge fight.

TUNGSTEN BULLETS MAY CAUSE CANCER IN WOUNDS

Tungsten alloys used in battlefield munitions to make them less toxic may cause cancer in wounded personnel. Animal tests by the Armed Forces Radiobiology Research Institute in Bethesda, Maryland showed that implanted tungsten pellets simulating shrapnel caused extremely aggressive tumors in rats. Researchers said the findings were cause for serious concern over wounded battlefield survivors.

GUN NEWS TICKER - QUICK TAKES ON THE NEWS

● **Lake Charles, Louisiana:** Sales of semi-automatic firearms are soaring now that the so-called "assault weapons" ban has expired. Greg Ware with Southwest Gun and Knife Shop sells five to six AK-47s a week. "People want to get them while they can," Ware said. Earl Gothreaux with Hunters Supply and Pistol Range has seen an increase in high capacity magazine sales as well. Both stressed that getting a fully automatic firearm is extremely difficult and involves "a lot of red tape."

● **Bellevue, Washington:** CNN reported on what might happen to a jetliner if a terrorist shot it with a .50-caliber rifle, giving enemies instructions, says the Citizens Committee for the Right to Keep and Bear Arms. CCRKBA Executive Director Joe Waldron said the report encouraged an incident, "just so CNN can later say 'We warned you.'" The report admitted that the clumsy and expensive competition rifles have never been used domestically in a criminal event.

● **Mission, Texas:** The City Council of this small city has passed an ordinance declaring four areas off limits to handguns. Mission lawyers worked for two years to find a way to ban guns in the four areas and still comply with a state law allowing persons entry to government property carrying a legal concealed handgun. Exceptions in the law include educational areas and facilities used by police and the court system. The new ordinance affects only those areas. The Texas Attorney General has not yet examined Mission's new rules.

● **El Paso County, Colorado:** El Paso County is doing the opposite of Mission's new gun ban on government property, and has agreed to consider letting anyone openly carry a firearm into most government buildings. Local governments can't ban concealed weapons on their property, but can ban open carry. County commissioners accepted the request of Pikes Peak Firearms Coalition to consider reversing the open carry ban imposed in 1996. A hearing on the question has been scheduled.

● **New York City:** Mayor Michael R. Bloomberg has urged the U.S. Senate to reject a bill immunizing the firearms industry from frivolous lawsuits. He maintained that guns are a public nuisance, a lawsuit strategy the city has pursued for four years. Bloomberg claimed the city's lawsuit was "exceedingly important" to "rid the city of illegal guns," and the proposed law would probably spell the end of New York City's lawsuit.

● **Atlanta:** Dr. Robert Hahn of the federal Centers for Disease Control and Prevention is lead author of a new report saying there is not enough evidence to say gun laws reduce violence. The report was a review of studies, not original research, by the Task Force on Community Preventive Services and covered studies published between 1979 and March 2001 of firearms laws and violence prevention. The studies compared rates of gun-related violence among groups of people who had lived under the laws with those who had not lived under the laws or who had little exposure to the laws. The Task Force did not recommend that current laws be changed in any way. It simply said they don't know what effects, if any, the laws have.

● **Fremont, California:** The city's police force will soon become the first in California to stop responding to most burglar alarms, prompting insurance salesman Dennis Wolfe to urge his fellow citizens to arm themselves. "If the police aren't going to protect us, we have to protect ourselves," he said. Wolfe has also begun a campaign to recall Mayor Bob Wasserman if he doesn't rescind the policy. Police will only respond to alarms with a verification system.

● **Athens, Ohio:** Gun-rights advocate Reginald Jones recently delivered his presentation, "Gun control is racist," to a group at Ohio University. Jones maintained that gun-control laws were used to keep blacks from defending themselves against the Ku Klux Klan in the old South and against the "criminal class" in the urban ghettos of today. "We can't hold criminals accountable," Jones said, "so we hold guns accountable." Jones also said there is a definite media bias against conservative blacks and against guns.

Parting Shot

SELF DEFENSE ON THE RISE

With more states improving concealed carry laws and other restorations of the Second Amendment, more people are fighting crime by shooting back. Here is a brief compendium of some recent cases:

Clarkstown, New York: Barry Fixler, owner of Estate Jewelry store, thought he had a sweet Valentine's day sale when two men entered his store around 9 a.m. asking to see engagement rings. But they each pointed semi-automatic weapons at his head and demanded money. Fixler moved as if to comply but grabbed his personal handgun and shot both suspects, but one fled the scene. The getaway van driver was caught moments later in a Toys R' Us parking lot in nearby Nanuet. The suspect in custody underwent surgery and remains in serious condition.

Burlington, North Carolina: A man named Tele Richmond, 22, invaded a home with three other men in an attempted robbery at gunpoint. One of the residents got his handgun and shot Richmond, who was captured lying in the front yard suffering a gunshot wound to his torso. The other suspects were last seen running away. None of the residents was injured, police said.

Bayport, Long Island: 70-year-old Allan Densing was confronted in the interior decorating store where he works by Carrie Lewis, 20, and his alleged accomplice, Shalisea Doran, 21, armed with a shotgun, who entered and demanded money. Densing grabbed the shotgun away from Doran. Sean Mullarkey, owner of the next-door auto body shop, heard the commotion and came to Densing's aid, wrestling Doran to the ground. They held the suspects until police arrived. The two were charged with attempted robbery and criminal use of a firearm.

New Orleans, Louisiana: An intruder broke into a home on the east side of town where the 44-year-old homeowner retrieved a gun and shot the intruder to death, police said. The intruder had broken into several other homes in the area and had a long criminal record.

Charlotte, North Carolina: Four men wearing ski masks entered the \$29.99 Shoe Warehouse and announced they were robbing the store. The robbers started searching the ten customers in the store and then started shooting. An unnamed store clerk grabbed a gun and shot back, killing one of the robbers and seriously wounding another. The other two were also wounded, but escaped, hijacking a car in a parking lot next door.

Imagine the outcomes if none of the victims had been armed. Not all would probably have been as lucky as shotgun-grabbing Mr. Densing.

Alan M. Gottlieb

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