

The Gottlieb-Tartaro Report

THE INSIDERS GUIDE FOR GUN OWNERS

Issue 125

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Dear Subscriber,

You'd think that with gun rights-minded Republicans in control of both houses of Congress, gun owners would be secure. No such luck. Anti-gun forces still keep pushing the gun control agenda.

Bills are moving through Congress to ban sales to anyone named on error-prone terrorist watch lists; to kill the frivolous lawsuit bill that would block anti-gun litigation; and to ban .50-caliber rifles.

Two Democrats, Sen. FRANK LAUTENBERG (NJ) and Rep. JOHN CONYERS (MI), are pushing "no fly, no buy" bills. Their measures **add the no-fly list used by airlines to the National Instant Criminal Background Check System (NICS)** used by gun dealers to make mandatory background checks.

Both bills, H.R. 1225 and S. 578, would also require sales records be kept for at least ten years.

The no-fly list named by the bills is so defective that it includes some senators and congressmen, and even the head lawyer for the National Shooting and Sports Foundation (NSSF), the firearms industry's trade group!

People who have been stopped at airports because their names are on the no-fly list include Sen. EDWARD KENNEDY (D-MA), Rep. JOHN LEWIS (D-GA), and Rep. DON YOUNG (R-AK).

Rep. STEVE KING (R-IA), member of the Judiciary Committee, says he will not support any such bill to deny U.S. citizens their constitutional right through a secret list without adjudication.

"Boarding an airplane is a privilege, owning a gun is a right," he said.

The campaign to sink the Protection of Lawful Commerce in Firearms bills, H.R. 800 and S. 397, has been joined by two New York Democrats, Rep. CAROLYN MCCARTHY and Sen. CHARLES SCHUMER.

The two parroted anti-gun rhetoric by the Brady Campaign to Prevent Gun Violence and The Million Mom March.

Rep. MCCARTHY said, "We have not given up the fight," despite the optimism of pro-gun Sen. LARRY CRAIG (R-ID) that the bill will pass.

Sen. SCHUMER vowed to add so many amendments they would effectively kill it in the Senate. He said, "Hopefully, we'll be able to do what we did last year where the gun lobby will not want to see it passed."

The law would block lawsuits intended to bankrupt the firearms industry, but litigation dealing with unlawful acts committed by the gun industry itself would still be allowed.

Rep. JIM MORAN (D-VA) has introduced H.R. 654, the "50 Caliber Sniper Rifle Reduction Act," seemingly on cue after a CBS "60 Minutes" segment in January and a campaign by the radical Violence Policy Center.

The bill would impose more than just a ban on new purchases: in addition to registering all legally owned .50-caliber rifles and submitting to fingerprinting and an FBI clearance procedure, owners would have to accept the condition that when they die, the rifle cannot be inherited. Presumably the government takes the rifle as federal property. But who gets the "just compensation" guaranteed by the U.S. Constitution's Fifth Amendment?

Also in this issue: ● Student wins gun-at-school case ● Minnesota replacing invalid concealed carry law ● Gov. Bush signs "Stand Your Ground" law ● Pennsylvania lawmaker pushes criminal control, not gun control ● Gun control groups spreading in Africa ● Burglar beware in our Page Eight "Parting Shot"

**AT THE
FEDERAL LEVEL**

JUSTICES SIDE WITH GUN OWNER WHO CONCEALED ARREST IN JAPAN

Gary Small is a free man because of a **U.S. Supreme Court decision** which **overturned lower court rulings** that he had made false statements on a gun purchase form and **unlawfully possessed guns and ammunition** as a convicted felon.

The case turned on his **purchase of a 9-millimeter pistol** at a sports store in his hometown of Delmont, Pennsylvania in 1998. The mandatory federal form asked whether he had **ever been convicted "in any court" of a crime punishable by a year or more in prison**. He answered "no."

It was true that Small had never been convicted of any crime *in the United States*, but **he had been in Japan**. In 1994, he was caught at an airport picking up a container with **two rifles, eight pistols and over 400 rounds of ammunition** that he had shipped to Okinawa labeled as an "electric water heater."

**IN THE
COURTS**

Small was convicted of smuggling guns in Japan and **sentenced to five years in prison there**. He was paroled in 1998 and returned to the United States.

His Japanese conviction was found by federal authorities **in a routine survey** of purchases at gun dealers. Small was arrested and charged, but his lawyers moved to have the charges thrown out, arguing that **"any court"** meant any American court.

A federal district judge rejected his argument, and the U.S. Court of Appeals for the Third Circuit agreed. So, **Mr. Small went to the U.S. Supreme Court**.

The high court justices **reversed the lower courts**, ruling 5 to 3 that "convicted in any court" applies only to convictions in the United States.

Three justices dissented, saying **"any court" means what it says**.

The majority noted that Congress ordinarily intends its laws to apply **only within the United States**, and courts in other nations might not be fair.

They pointedly added, however, that "Congress, of course, remains free to change this conclusion through statutory amendment."

JUDGE OVERTURNS STUDENT SUSPENSION OVER GUN POSSESSION

A Superior Court judge in Skowhegan, Maine, has overturned a Mount Blue High School senior's suspension, saying that Sheldon Allen, 18, **didn't break school rules when he unknowingly brought a gun to school** in a pickup truck he borrowed from his older brother.

Justice Joseph Jabar **reversed the decision** by School Administrative District 9's school board **to suspend Allen for 20 days** after an unloaded pistol was found in the pickup truck.

Allen served a 10-day suspension but appealed the school board decision to suspend him for another 20 days--10 days more than the original suspension.

Jabar said **it was unfair to suspend Allen** when he had no idea the gun was in the truck.

GUN RIGHTS ADVOCATE TO CHALLENGE OHIO CITY'S BAN

Toledo, Ohio, has **banned concealed weapons in city parks**, and Bruce Beatty, 49, says it violates his rights. So he announced a party in Toledo's Ottawa Park, saying he would wear his .45-caliber pistol in a holster under his jacket.

About twenty-five supporters showed up with Beatty and waited for the police. They came and cited Beatty for a misdemeanor, carrying a fine up to \$100.

Beatty appeared at a brief arraignment before Toledo Municipal Court Magistrate David Smith and entered a plea of not guilty. Trial is set for June 3.

Ohio's concealed carry law **forbids city governments from banning lawful concealed carry at any location**.

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JUDGE SAYS GUN RECORDS NOT RETROACTIVELY PROTECTED FROM SUBPOENA

A federal trial court in New York has ruled that **federal officials must respond to a subpoena and release gun-tracing data** to New York City even though a provision of a recently enacted law might protect such information in the future.

This is the latest legal move in the city's **lawsuit against gun manufacturers and distributors** for alleged "negligence in diverting guns into illegal markets catering to juveniles and criminals."

IN THE COURTS

The federal Consolidated Appropriations Act of 2004 **forbids funds from being used to disclose firearms tracing records to the public.**

But Judge Jack B. Weinstein ruled that the law **doesn't apply retroactively** because if Congress had intended so, it would have included unequivocal language to that effect.

Gun rights advocates disagree, since **Congress alluded to the New York case during the drafting of the law as a reason to adopt it.** Critics say Weinstein is ignoring congressional intent.

D.C. GUN LIABILITY LAW: WIN SOME, LOSE SOME

The District of Columbia Court of Appeals has ruled that **gunmakers and sellers can be sued for shootings by third party criminals** that are carried out in the District with a list of **specific semi-automatic firearms.**

But the judges rejected claims of the D.C. government that they should be allowed to sue gun makers and sellers for creating a public nuisance and for negligence in selling firearms.

D.C.'s 1990 Assault Weapon Manufacturing Strict Liability Act is thus stripped of its two most dangerous features, nuisance and negligence, but remains a threat to gun makers and distributors--**only if D.C. prosecutors can identify a crime gun by model name and number, and link the gun to a shooting.**

Only individuals can bring such a lawsuit, but the District can then ask for reimbursement if the shooting victim is treated at District expense.

FOLLOW-UP: STURM, RUGER IS OUT OF D.C. LAWSUIT

The Fairfield, Connecticut-based firearms company Sturm, Ruger said the **D.C. Court of Appeals dismissed all claims**, including those of negligence and public nuisance, against the company **and other members of the firearms industry.**

According to the company, none of the pleadings in the Washington case identify a Sturm Ruger firearm as having been used in any of the criminal shootings. Observers are uncertain if any further appeal will be pursued by any party to the lawsuit.

MINNESOTA CONCEALED CARRY LAW STRUCK DOWN, BEING REBUILT

The Minnesota Court of Appeals **struck down the state's concealed carry law**, not on its substance, but because it violated a constitutional requirement that each law cover only one subject.

The concealed carry law was included in a Depart. of Natural Resources bill on the theory that **hunting and guns were part of the department's jurisdiction.** The appeals court ruled that it was an unconstitutional bundling of two subjects.

Minnesotans who have been issued permits can still legally carry concealed handguns. The process of issuing permits will change: it is now being reworked and **a new concealed carry bill has passed the Senate Crime Prevention Committee.**

However, members of the committee's Democratic-Farmer-Labor Party (DFL) altered the bill so much that **supporters are preparing to strip the additions away** when the bill is heard by the full Senate.

Objectionable provisions were added to **require fingerprints from permit seekers and to create more gun-free zones.** The changes would also require applicants to list their home addresses for the prior five years.

Concealed carry supporters feel they can restore the original bill in the full Senate.

ALASKA PREEMPTION BILL PASSES HOUSE

Alaska House lawmakers have approved legislation that would bar cities and boroughs from going any further than the state in restricting firearms.

Rep. Bill Stoltze (R-Chugiak) said the bill would protect people from unwittingly violating local laws as they travel around Alaska.

ARIZONA GOVERNOR VETOES "GUNS IN BARS" BILL

Gov. Janet Napolitano has vetoed House Bill 1363, legislation which would have created an exemption to the law which says weapons are not permitted where someone can drink beer, wine or liquor.

Napolitano also signed a bill into law allowing Arizona public schools to offer an elective gun safety course.

IN THE STATES

CALIFORNIA GUN CONTROL TAG-AND-TRACK BILL ADVANCES

Democrat Attorney General Bill Lockyer's controversial bill, SB 357, to microtag and track handgun bullets has passed the Senate Public Safety Committee on a 4-2 vote. Critics say the system would bankrupt ammunition makers.

If passed into law, California would be the first state to require such a system, building a costly bureaucracy and trashing millions of dollars worth of existing ammunition-making machinery. Required tagging machines cost \$500,000 each.

All handgun bullets brought into the state would have to be microtagged, with violators subject to a year in prison.

The bill is expected to pass the Senate but may be blocked in the Assembly. Gov. Arnold Schwarzenegger has taken no position on the measure.

CONNECTICUT LAWMAKERS DROP RIFLE REGISTRATION PLAN

State legislators have dropped language from a firearms safety bill that would have required buyers of rifles, not just handguns, to get permits for their purchases.

The Judiciary Committee decided to scrap rifle registration and concentrate on stolen or missing guns, said state Rep. Robert Farr (R-West Hartford).

An anti-gun group vowed to lobby for rifle registration, said Lisa Labella, director of Connecticut Against Gun Violence, a Fairfield group.

GOV. BUSH SIGNS FLORIDA "STAND YOUR GROUND" LAW

Gov. Jeb Bush has signed a self-defense bill into law that protects people who meet "force with force" from prosecution or civil liability.

The bill passed the legislature overwhelmingly. The bill, SB 436, expands the right Floridians already have in their homes into public spaces, including in the street or a place of business.

ILLINOIS LEGISLATURE IN MIXED BAG OF MEASURES

SB 57, a bill to prevent terrorists from buying firearms at gun shows while protecting the rights of law-abiding gun owners, has passed out of the Senate by a 37-21 vote, and was sent to House, where it has been placed on the Calendar for its second reading. It would require background checks for purchasers at gun shows and that all records be destroyed within 24 hours.

A competing House version, House Bill 794, supported by Chicago gun control advocates, passed the House and is now awaiting Senate consideration. It requires background checks, but does not require records to be destroyed.

SB 2104, a bill to prevent Chicago and other Illinois cities from harassing gun owners transporting firearms in a lawful manner under state law, but in violation of more restrictive city ordinances has passed the Senate and a House committee. It provides that a unit of local government, including a home rule unit, may not regulate the transportation of firearms.

A bill to allow gunshot victims to sue gun sellers if they sold guns that ended up in criminal hands was defeated in the House. The Senate defeated a bill requiring gun owners to report lost or stolen firearms.

INDIANA PASSES TROUBLESOME GUN SEIZURE BILL

The state Legislature has passed House Bill 1776, which permits law enforcement to seize firearms from people "considered to be dangerous" and keep the guns. After 180 days, the owner can ask for them back.

But prosecutors can ask to extend the time weapons are held, based on a court-ordered review of the risk posed. Firearms not returned after 5 years will be destroyed.

Civil rights advocates are concerned about who decides who's "dangerous."

IN THE STATES

KANSAS GETS STATE PREEMPTION LAWS

Gov. Kathleen Sebelius has signed SB 195, a law that makes gun laws uniform throughout the state. Hunters and other travelers have been harassed for violating city laws they didn't know about. All firearms regulation will now be uniform throughout the state.

MINNESOTA BILL TO REPLACE CONCEALED CARRY LAW STRUCK DOWN BY COURTS

State lawmakers have introduced legislation to re-enact a concealed carry law recently ruled to be unconstitutional for being tacked onto another law. The new gun law is essentially the same as the one struck down, but is a "stand-alone" to avoid the same problem. Companion bills were introduced in both House and Senate.

NEBRASKA LAWMAKERS CONSIDER CONCEALED CARRY BILL

The Legislature's Revenue Committee has voted 6-2 to advance Legislative Bill 454 to legalize carrying concealed weapons in Nebraska. Introduced by State Sen. Jeanne Combs of Friend, it would allow Nebraskans to carry concealed handguns if they obtained training and passed a background check.

NEVADA ASSEMBLY OKAYS STUN GUN BILL

AB123, passed by the Assembly, allows anyone to use a stun gun for self-defense. Felons, fugitives and the mentally ill are prohibited from using them.

NEW MEXICO CONCEALED CARRY LAW EXPANDED

Gov. Bill Richardson has signed House Bill 641, lowering the minimum age for concealed carry permits to 21 from 25, extending the license term to four years from two, and allows for a waiver of license fees for law enforcement.

OREGON SENATE NIXES BILL TO LIMIT CONCEALED CARRY

A Senate panel has rejected a bill that would have authorized school districts to bar concealed weapons permit holders from taking guns to schools.

PENNSYLVANIA LEGISLATOR TO PUSH CRIME CONTROL, NOT GUN CONTROL

State Rep. Dennis O'Brien (R-Philadelphia), chairman of the House Judiciary Committee, has pledged to pass bills giving stiffer sentences to gun criminals instead of more restrictions on lawful gun owners.

O'Brien was appointed to a new 21-member Commission to Address Gun Violence by Gov. Ed Rendell. He said officials should crack down on criminals who use guns illegally, not on gun owners and sportsmen who obey the law and who, under the Second Amendment, have the legal right to own firearms.

TENNESSEE MAY GET CONSTITUTIONAL RIGHT TO HUNT

The General Assembly is considering a bill to make hunting and fishing a constitutional right in Tennessee. The Constitutional amendment was approved in the Senate Judiciary Committee and is now before the Senate Environment Committee.

TEXAS GUN BILL WOULD PROHIBIT SALES TO MENTALLY ILL

Senate Bill 869, in the Texas Senate proposes to restrict the sale of firearms to people who have been judged to be mentally defective and those who have been committed to a mental institution.

THE UNITED KINGDOM'S ELECTORAL GUN POLITICS

With the elections safely won, third-term Prime Minister Tony Blair is touting his Labor Party's excellent record in reducing crime by 30% since they came to power in 1997. Only he's using the favorable British Crime Survey, which just asks people about their experiences of crime.

AROUND THE WORLD

However, official recorded crime figures show violent crime has risen 9 percent in the last three months of 2004. Gun crime, particularly that involving imitation weapons, has risen by 10 percent in the past year.

UNITED NATIONS ANTI-GUN PROGRAM OKAYS WEAPONS FOR REVOLUTIONARIES

Pablo Dreyfus, coordinator of firearms research for Viva Rio, a non-profit group in Rio de Janeiro, is part of the United Nations Program to eradicate illicit trade in small arms. He said Program members oppose gun ownership by individuals such as guaranteed by the U.S. Constitution's Second Amendment.

But "struggles for independence or those waged by an oppressed people could be considered exceptional cases that would justify access to weapons for the civilian population, without government authorization."

He's about 200 years late getting the point of the Second Amendment, that an armed populace tends to get less oppressed than a disarmed one.

AUSTRALIA'S NEW CALL FOR BAN ON SEMI-AUTOMATICS

A gun control group has called for a total ban on semi-automatic handguns because some 4,000 firearms are stolen every year and get into criminal hands.

One critic sarcastically commented, "Imagine that, stolen guns getting into criminal hands."

How a new ban on guns will keep people from stealing guns was not addressed.

ISRAEL TO DISARM WEST BANK SETTLERS, MAY FACE CIVIL WAR

Jewish settlers in four West Bank settlements will be disarmed about two weeks before they are to be removed from their homes this summer, Israeli military officials have said. But settlers say they will not give up their weapons.

Prime Minister Ariel Sharon told NBC's "Today" that "now for the first time I'm taking steps to protect me from Jews. The tension here, the atmosphere looks like the eve of a civil war."

GUN CONTROL GROUPS PROLIFERATE IN AFRICA

A Liberian gun control group called Center for Peace Education and Democracy has issued a statement that sounds very American: "The prolonged armed violence in Liberia is a result of the proliferation of small arms. Political opportunists, demagogues, and bloodthirsty killers promote the culture of gun violence and corruption in the country."

So says Robert Miller, executive director of the Center. Liberia was created by Americans during President James Monroe's abortive slave-repatriation campaign in the 1820s. It has recently emerged from twenty-five years of civil war.

In Namibia, President Hifikepunye Pohamba has told all residents to hand over all unlicensed firearms to the police. Rwanda has burned 6,000 guns, and numerous other African nations including Uganda, the Republic of Congo and Angola have similarly targeted guns instead of the criminals who use them illegally.

In South Africa, a government amnesty that has already netted 10,801 illegal firearms and 19,688 *legal* guns, has been extended from March 31 to June 30.

PHILIPPINE GUN OWNERS NOT RENEWING LICENSES

The Philippine National Police has reported that almost half of the country's nearly one-million legal gun owners failed to renew their firearms license. Superintendent Arturo Cacdac Jr., chief of the PNP's Firearms and Explosive Division, said that out of 915,000 licensed firearms holders 415,320 did not renew their licenses.

GUN NEWS TICKER - QUICK TAKES ON THE NEWS

● **Houston, Texas:** A recent Gallup Poll says public opinion of the National Rifle Association, in Houston for its 134th annual meeting, is high. Six in 10 Americans say they view the organization favorably, while about a third view it unfavorably. About 18% view the NRA "very" favorably, while 15% view it "very" unfavorably. People in the middle split 42% favorably to 19% unfavorably.

● **Blacksburg, Virginia:** Virginia Tech officials say an unnamed student who carried a concealed weapon to class faces disciplinary action, even though there is no state law prohibiting guns on state college campuses. The student had a state-issued permit to carry a concealed gun and was not charged. The student could be suspended or expelled. Gun rights advocates are considering a lawsuit against the college to revoke its decades-old anti-gun policy.

● **Columbus, Ohio:** A volunteer news manager for the Ohioans for Concealed Carry website asked the Ohio Department of Public Safety for a media credential card and was refused. Volunteer Chad Baus thinks it's because the state doesn't want him to have access to the list of concealed carry permit holders, a privilege limited by law only to credentialed media people. Baus cites Ohio law that defines a "journalist" and says he qualifies. DPS Administrative Assistant Michele DeGraffinreed disagrees, saying the refusal is a matter of policy for security reasons, since Baus is a Web-only news manager who does not appear in person at dangerous incidents where the credential card worn around the neck visibly tells police the person is media. Gun owners see prejudice in the DPS refusal.

● **London, England:** Mothers Against Guns campaigner Maureen Lynch, 55, of Park Street, London, has been charged with stealing funds donated to the group, which lobbies for tougher sentences for those convicted of firearms offenses. Scotland Yard confirmed that Lynch is alleged to have taken the money from the group's Royal Bank of Scotland account between March and September 2004.

● **Bellevue, Washington:** The Second Amendment Foundation released a recent gun ban poll it commissioned. Conducted by Zogby International, the poll shows that a wide majority reject gun bans as being effective in the fight against terrorism. 75 percent of respondents disagreed with the idea that "guns bans would reduce the threat of terrorism." Only one in five supported the notion. The poll clearly shows that anti-gunners are out of step with the American public.

● **Minneapolis, Minnesota:** Koscielski's Guns and Ammo is the only remaining gun shop in Minneapolis, and its days appear to be numbered. Mark Koscielski, the owner, awaits a hearing soon before the Zoning Board of Adjustment, which has ordered him to cease operating the gun shop because it is out of compliance with zoning laws. The city tried to shut him down before, but federal courts ordered that he be allowed to continue doing business. That resulted in an exemption from the zoning code, but his lease expired in 2003 and he was forced to rent in an area not zoned for gun shops, which must be at least 500 feet from a church, school, park or library, and 250 feet from a residence. Doesn't leave much, certainly no gun shops.

● **Toledo, Ohio:** The big story at the end of Ohio's new concealed carry law is that there is no big story. Lucas County Sheriff James Telb said, "We haven't had anybody shot in road rage, or anybody shooting a police officer. It's gone pretty smoothly." 46,000 Ohioans have obtained concealed carry licenses in the past year.

● **New York City:** CVS and Kmart have agreed to pay \$130,000 in fines for selling toy guns at their stores in New York City. CVS paid \$100,000 following a citation by the New York City Department of Consumer Affairs (DCA), which found more than 400 toy guns in stock through subpoenaed records. Kmart paid \$30,000 when the department found nearly 50 in stock, also through subpoenaed records. The DCA has forced stores to remove more than 5,600 toy guns citywide and imposed more than \$600,000 in fines. Toys removed included "Fun Zone Action Set" and Manley Toy Quest "Official Military Play Equipment."

Parting Shot

THE RIGHT TO SELF-DEFENSE

Mr. V. O. Goins is a 64-year-old Arkansas man. Early last month, he got lost while driving his van through Milwaukee, Wisconsin, and stopped at a gas station on North Avenue to ask directions.

A group of five young males walked up after the stolen van they were in broke down, and tried to steal Goins' van to get back to Racine.

One young man stole Goins' car keys, and another scuffled with him as he tried to scramble back in his van. Goins was only able to get as far as the front seat, where he reached under and found his handgun.

With a third young man beating Goins with his own cane, and 20-year-old Kendall Moss of Racine choking him, Goins pulled the gun and shot point blank.

Four of the thieves fled, but Moss died at Goins' feet.

Milwaukee police responded to the scene. They arrested Goins and put him in jail without filing charges. A cousin of Moss was later arrested and charged with robbery.

A week later, the Milwaukee County district attorney's office decided Goins had acted in self-defense and set him free.

According to Assistant District Attorney Karen Loebel, the office decided there was a strong likelihood Goins could not be convicted for the shooting.

What Goins did--carry a concealed weapon--is not legal in Wisconsin.

Goins had a valid Arkansas concealed carry permit on his person at the time of the shooting, but Wisconsin does not honor such a permit from anywhere.

Even though the Wisconsin State Constitution says in Article I, Section 25, "The people have the right to keep and bear arms for security, defense, hunting, recreation or any other lawful purpose," the state is one of four that does not recognize the right to concealed carry.

Because Mr. Goins had that gun under his car seat, he will be driving home to his family in Arkansas instead of them going to Wisconsin to collect his remains.

If Wisconsin cannot control its criminal element, which it clearly cannot, it should pass legislation to allow concealed carry for all its law-abiding people.

It is unfortunate that Mr. Goins must now live with the death of another human being on his hands, but it is more unfortunate that citizens of Wisconsin have no lawful means to defend themselves from the remaining thugs on their streets.

Alan M. Gottlieb

Joseph D. Tartaro

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