

The Gottlieb-Tartaro Report

THE INSIDERS GUIDE FOR GUN OWNERS

Issue 156

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Dear Subscriber,

The BUSH nominee for director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives has won a key congressional approval - but that might not be such good news for gun owners.

MICHAEL J. SULLIVAN, the top federal prosecutor in Massachusetts, has been approved for the post by the Senate Judiciary Committee in a voice vote.

His appointment now goes to the Senate floor.

SULLIVAN, an anti-gun cop, has been described in the media as "a law-and-order Republican." He has been acting head of the bureau for the past 13 months while continuing in his post as US attorney.

SULLIVAN was named US attorney by President BUSH shortly after the Sept. 11, 2001, terrorist attacks.

US Senator JOHN KERRY said that SULLIVAN was a "good law enforcement officer who should do a fine job. ... Stretched way too thin over the past year caught between two full time jobs, he still stood out as a highly competent professional and a person of character."

That's a fairly standard remark for a politician, but then **rabidly anti-gun TED KENNEDY said of SULLIVAN, "He has had the impossible responsibility" of serving in both jobs and he's "done as good a job as one could have hoped at both. We'll miss him in Massachusetts, but he'll be a strong leader at ATF, and I look forward to working with him on key issues on gun control."**

Someone who's that chummy with TED KENNEDY gives many gun owners a cold chill. Some are urging their Senators to **hold up SULLIVAN's confirmation until he answers some troubling questions** that his tenure in the acting position has raised:

"Will you end the practice of **imposing undefined legal standards on dealers**, and work to define the word "willful" as it relates to record-keeping violations?

"Will you **hold government officials accountable** to the full extent of the law for fraud, misuses of government personnel and property?

"Will you support legislation to **require videotaping of firearms testing** in criminal cases?

"Will you require **precise testing procedures to be put into writing** for evaluating whether an item is a firearm? Will you reevaluate previous rulings made before the existence of written procedures?

"**Will BATFE employees be allowed to testify** about the nature of a firearm before testing procedures are put into writing?

"Will you stop BATFE from **tracing firearms that have not been taken as evidence in a crime?**

"Have you taken measures during your initial tenure to ascertain whether gun traces requested by police agencies are being done under the terms of 18 USC 926(a) which **limits traces as part of a criminal investigation?**"

However, the time for such questions has passed, and now it's a matter of how the Senate votes. **SULLIVAN's confirmation is expected to be an easy pass**, but many are asking if America really needs an anti-gun cop running BATFE.

Also in this issue: ● *Mobster shot in gun-free Japan* ● *Boston cops trying warrantless searches* ● *U.S. Supreme Court accepts landmark gun rights case* ● *Self defense on the rise* ● *Hillary snubs Gun Rights Policy Conference* ● *Options for the Supreme Court and Heller in our Page Eight "Parting Shot"*

**ON THE
FEDERAL
LEVEL**

CANADA'S FEDERAL GOVERNMENT TRIES TO KILL GUN REGISTRY

Canadian Public Safety Minister Stockwell Day has introduced legislation that would make it possible to move the money now used for registering firearms with the government to front-line policing.

The bill is intended to fulfill a promise made in the Conservative party's election platform.

"We want to give the resources to our integrated border enforcement teams to stop people that want to bring illegal guns into our country," said Day.

"And when we want to put more police officers on the street, when we want an increase in resources to help our police services, we will be able to see a reduction in the number of crimes committed with firearms."

However, the bill is unlikely to come to a vote. It is nearly identical to a bill put forward in 2006 that was never brought to a vote, in part because the government was sure to lose against all three opposition parties that are strong gun-control advocates.

**AROUND
THE
WORLD**

CANADA'S COP'S TRY TO KEEP GUN REGISTRY

Heads of the Canadian Police Association, Canadian Association of Police Boards and the Canadian Association of Chiefs of Police have sent a joint letter to Public Safety Minister Stockwell Day urging the federal Conservative government to ignore pressure from gun owners and put into effect new rules that will require the marking of all imported firearms.

Day responded in an e-mail that "every useful legal tool" is being made available to law enforcement agencies to fight firearms smuggling.

Gary Mauser, a former Simon Fraser University criminologist, sits on Day's firearms advisory committee and said he does not see the value in the firearms marking requirement, since any import stamp will simply duplicate information already contained in the serial number. The rule would only drive up the cost of imported firearms and limit the availability of some models, which is probably the intent of the Canadian cops who wrote the letter.

MOBSTER KILLINGS SPUR MORE GUN CONTROL IN JAPAN

Shortly after the Japanese government moved to toughen gun laws in a country that prides itself on crime-free streets, two gangsters were killed on those streets Fukuoka prefecture, one shot, the other stabbed.

Toshikazu Matuso, 61, local crime boss of the nationwide Dojinkai syndicate, was shot dead, and his driver, Kaname Fujimura, 48, was stabbed to death by assailants who escaped.

The new law increases penalties for firing a gun to five year to life in prison - if Japanese police can catch the shooter.

RANDOM SHOOTING BOOSTS SWISS GUN CONTROL GROUPS

A 21-year-old Swiss Army soldier confessed to killing a 16-year-old girl in Zurich, bringing out pacifist groups and the left-wing Social Democratic Party called for tighter gun laws.

In September, the Swiss Parliament took the unprecedented step of banning enlisted men from keeping their ammunition at home. The Swiss government conscripts all able-bodied men aged 20-30 for about 3 months and issues them a rifle to be kept at home.

Several killings by soldiers with army firearms brought the new law.

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MARYLAND SENATE OVERRIDES GUN BILL VETO

The Maryland Senate has voted unanimously to override Gov. Martin O'Malley's veto of a bill that would let police departments dispose of their guns by selling them to a manufacturer.

State law had required police departments to either destroy the guns or sell them only to another police agency or an active or retired officer.

O'Malley said in his veto statement that "police weapons should not be potentially made available outside of the law enforcement community."

However, the Senate and House of Delegates had approved the bill unanimously. No one testified against it during a Senate committee hearing.

IN THE STATES

BOSTON WARRANTLESS-SEARCH PROGRAM CHALLENGED

Boston City Councilor Chuck Turner has called for a hearing on an outrageous new policy allowing police to go door to door, asking permission to search for guns. Turner said, "While I understand and share the concern regarding the spread of guns and the of guns in the city, especially by teenagers, I do not believe the warrantless-search approach is an appropriate response."

Turner is particularly concerned that police officers would not inform people of their constitutional right to deny access to their home unless police have a warrant.

District Attorney Daniel F. Conley said, "under no circumstances" would he support any program designed to circumvent constitutional rights.

Boston Police Department officials say they will continue the program anyway.

NEW YORK CAPITAL ANTI-GUN TASK FORCE HAS SECRET PURPOSE

Rev. Edward B. Smart of the Israel AME Church, a member of Albany's newly constituted task force on gun violence, has called for a "gang summit" that would grant a temporary amnesty to gang leaders to talk to the task force about their problems.

"We have to build a rapport with families and find out what the problem is," Smart said. Kids on the street at 2 a.m. wasn't enough clue for him.

The real reason for the task force was revealed by member Leonard Morgenbesser, who said he hopes to obtain data from the federal Bureau of Alcohol, Tobacco, Firearms and Explosives showing where the guns seized in Albany are originally sold.

It's a front for New York City Mayor Michael Bloomberg's assault on gun shops that is currently being challenged by a gun seller lawsuit filed in Georgia. Gun shops there were victimized by private detectives hired by Bloomberg to stage "straw sales" and implicate them in illegal activity. They're fighting back.

ANTI-GUN PENNSYLVANIA GOV. RENDELL FAILS TO SWAY PRO-GUN LAWMAKERS

Gov. Ed Rendell recently made a rare appearance before the state's House Judiciary Committee pushing for a one-gun-a-month law and a measure to allow local governments to create their own gun control laws.

The committee rejected both measures and tabled a third one that would require owners to promptly report lost or stolen guns.

VIRGINIA'S GOV. KAINE WANTS GUN SHOW BACKGROUND CHECKS

On a recent morning radio show, Virginia Gov. Timothy M. Kaine called for new NICS background checks on firearm sales at gun shows, but stopped short of declaring the passage of the legislation as a high priority for the 2008 General Assembly session.

Using the misleading word "loophole" - meaning any law gun control advocates want that doesn't already exist - Kaine said, "Either you want felons to have guns or you don't," implying that all gun show customers are felons.

Bills imposing gun show background checks have been defeated three years in a row in the state Senate. The House of Delegates has not considered the issue recently.

SUPREME COURT AGREES TO HEAR GUN RIGHTS CASE

In a historic move, the U.S. Supreme Court has agreed to decide whether Washington, DC's strict ban on handguns is constitutional, which could set the stage for a wide public debate on the nature of gun rights and add a contentious new issue to the already combative presidential campaign.

The high court's acceptance of the case was a landmark red-letter day that gun rights advocates have been waiting for decades to arrive.

The *Chicago Tribune* quoted Alan Gottlieb, founder of the Second Amendment Foundation, as saying, "I'm on cloud nine," and reported that he had good reason to be optimistic: the modern court hasn't ruled on the scope of the Second Amendment, and its present conservative majority "may be inclined to make an emphatic statement about gun ownership as an individual right."

**AT THE
SUPREME
COURT**

The case is known as *District of Columbia v. Heller*, 07-290. Dick Anthony Heller, 65, an armed security guard, sued the District after it rejected his application to keep a handgun at his home for protection.

The U.S. Court of Appeals for the District of Columbia ruled 2-1 for Heller in March.

The last time the Supreme Court examined the Second Amendment was in 1939, when it ruled in *United States v. Miller* that transporting a sawed-off shotgun across state lines by a bootlegger was not what the amendment's authors had in mind when they were protecting arms needed for military service.

Almost every court of appeals in the nation since then has read the amendment to convey only a collective right to gun ownership. But the U.S. Court of Appeals for the D.C. Circuit broke ranks and struck down a gun control law on Second Amendment grounds.

And it was in no uncertain terms. The panel of three Republican-appointed judges voted 2-1 that the amendment "protects an individual right to keep and bear arms" and that "once it is determined - as we have done - that handguns are 'Arms' referred to in the Second Amendment, it is not open to the District to ban them."

The ban, which the District enacted in 1976, shortly after the city won home rule away from the federal government, is one of the toughest in the nation. It prohibits residents from registering and possessing handguns in almost all circumstances.

The District's ban also has one of the worst records for failure to control guns. Guns are still readily available through illegal means and the city's murder rate ranks among the nation's highest with 169 killings in 2006.

But the public debate over the Second Amendment still revolves around whether it confers a collective or an individual right. The Supreme Court is the only authority with the power to say which it is - and make it stick.

Gun owners can give credit for the case to Robert A. Levy, a wealthy entrepreneur and lawyer who is also a scholar at the libertarian Cato Institute, has worked for years to bring the issue to the Supreme Court.

He and co-counsel Clark M. Neily III and Alan Gura assembled six D.C. residents to challenge the District ban. They had to find a way to approach the individual right problem clearly and with no side issues that could defeat the case, so they decided to present the court with law-abiding plaintiffs who wanted the firearms for self-defense rather than people appealing criminal convictions for possessing weapons.

Their original case was *Parker v. District of Columbia*. A federal district judge ruled against the residents, but the appeals court overturned that decision in a powerful opinion written by Senior Judge Laurence H. Silberman.

District of Columbia Attorney General Linda Singer filed a petition arguing that the appeals court was wrong because it recognized an individual right rather than collective right, because the amendment restricts only federal interference with state-regulated militias, and because the District is within its rights to protect its citizens by banning a certain type of gun.

Arguments will be heard early next year.

THE SOUTH RISES AGAINST BLOOMBERG

New York City Mayor Michael Bloomberg now faces two lawsuits from southern states where he sent hired "straw purchasers" to incriminate gun dealers.

The mayor sued Adventure Outdoors, a gun shop in Smyrna, Georgia, Mickalis Pawn Shop in Summerville, South Carolina, and other out-of-New-York gun dealers who had sold many of the firearms that police recovered from crimes in New York.

IN THE OTHER COURTS

Bloomberg's suits accused the dealers of selling to people whom they knew were likely to quickly resell to criminals.

In news conferences, Bloomberg made comments about the gun sellers. Now he may face a jury over allegations that he defamed the gun dealers by speaking ill of them in the press.

Among other things, the mayor has called the dealers whom the city sued as "the worst of the worst," and said they "have New Yorkers' blood on their hands."

Judges in Georgia and South Carolina have ruled that their defamation lawsuits against Bloomberg may proceed.

Former congressman Bob Barr, now an Atlanta attorney, is representing the Smyrna gun dealer. Sonaly Hendricks is representing Larry Mickalis.

OHIO COUNTY DROPS GUN LAWSUIT

Lorain County, Ohio has dropped its lawsuit against Ohio Gov. Ted Strickland and Ohioans for Concealed Carry President Jeff Garvas, which sought to have a 2004 state law declared unconstitutional. It required county sheriffs to provide the names of concealed carry permit holders to journalists.

The county also sought to determine whether Garvas, who had requested the names, could be considered a journalist because he writes for the organization's quarterly newsletter. Garvas said the lawsuit was dropped because he withdrew his request for the information. He didn't have time to keep up the fight, but had hoped to lose the lawsuit, which he believed effectively would have barred anyone from getting a list of those licensed to carry a concealed weapon.

JUDGE RULES OREGON TEACHER CAN'T TAKE GUN TO CLASS

English teacher Shirley Katz has no right to take her semiautomatic handgun onto Medford, Oregon school grounds, a judge has ruled.

Katz claimed she had a right to carry a handgun, as a defense against her former husband, despite School District policy against teachers carrying weapons.

But Jackson County Circuit Judge G. Philip Arnold ruled that, "The district has the right to enforce its policy."

JUDGE DISMISSES COUNTY SUIT TO SEIZE GUN CLUB

An Illinois county lost its three-year-long effort to seize and close a shooting range next to Scott Air Force Base when St. Clair County Associate Judge James Radcliffe dismissed the county's eminent domain lawsuit against the Caseyville Rifle and Pistol Club in Mascoutah.

The judge's reason: The May 2005 County Board resolution authorizing the lawsuit is too vague to withstand possible review by an appellate court.

MINNESOTA APPEALS COURT HEARS CHURCH CASE AGAINST GUN LAW

Edina Community Lutheran Church and Unity Church of St. Paul are seeking a religious exemption from the state law that allows citizens to carry concealed handguns into their churches.

The Minnesota Court of Appeals is considering whether the law places an undue burden on churches. Assistant Attorney General Pete Marker urged a three-judge panel of the court to uphold the law.

OKLAHOMA APPEALS FEDERAL RULING ON WORKPLACE GUN BANS

The State of Oklahoma has appealed an October federal court ruling that blocked enforcement of a 2004 state law that would restrict employers' right to ban guns in the workplace. Whirlpool won a lower court decision allowing their ban.

SELF DEFENSE WITH A FIREARM - IN THE NEWS

● **Enterprise, Alabama:** Two brothers, Contrell McReynolds, 21, and Donwone Frazier, were behind bars after one of them was shot while trying to break into Fred's Feed and Seed. The owner was insider as they tried to kick in a side door and opened fire with a shotgun. The two were arrested after McReynolds showed up at a hospital emergency room with a gunshot wound to the arm. Both brothers have been charged with burglary.

● **Miami, Florida:** An armed, ski-masked man entered Diaz Grocery late one recent night and pointed a gun at the store clerk. The store owner, who was nearby, pulled out a firearm and shot the robber. The man died on his way to Jackson Memorial Hospital.

● **Miami, Florida:** The day after the thug was killed trying to rob Diaz Grocery, in another part of Miami, a man and woman were sitting in a car when a man dressed all in black, wearing a ski mask and carrying a gun, approached them and demanded money - and to see the woman strip naked. The man in the car was a security guard from a nearby Food Giant, pulled his own gun, and exchanged gunfire with the man in the mask, who ran, threw his gun down in the mud and collapsed, dead.



● **Southbury, Connecticut:** John Nagy called police at 2 a.m. on his cell phone to tell them he may have shot an intruder in his home basement. Nagy had encountered the man after hearing noises, shot his gun in the direction of the intruder, and left his home to wait for police. State troopers responded and found the intruder suffering from a single gunshot wound. He was transported to Waterbury Hospital where he underwent surgery. He was found to have been the driver in an earlier car crash who fled the scene, walked half a mile, and entered Nagy's home.

● **Knoxville, Tennessee:** Horace Garland, 63, heard two men trying to break into his South Knox County home late on a recent Sunday night. The men were shouting and threatening, so Garland jumped out of bed, dove behind a door, and warned them he had a gun. They didn't listen, and when they came in he shot the first one. The second shouted "Quit shooting," and Garland let him come in and get the other one. The intruders were Jeremy Johnson, 21, and step-brother Timothy Lee Sellers, 26. Johnson was shot in the neck, but survived. Both were charged with aggravated assault and attempted aggravated robbery.

● **Cleveland, Ohio:** Roddy Prophet, 27, entered the Northfield Food Mart with a gun and demanded money. A clerk ran from the store and the owner retreated toward the door as Prophet grabbed the money. The store owner shot twice, hitting Prophet once in the head. He was flown to Metro-Health Medical Center where he was in critical condition. Police said the owner, who has been robbed on several occasions, acted in self-defense.

● **Clinton Township, Michigan:** A 22-year-old man entered Nick's Short Stop party store around 7:30 p.m., pulled a knife on a clerk and demanded money. The clerk's 17-year-old brother got the store's handgun and shot the robber, hitting him once in the chest and once in the arm. The robber was in grave condition at a local hospital. Store owner John Acho said this was the second robbery attempt since he purchased the store a month ago.

● **Yakima, Washington:** A Yakima homeowner caught two men inside his home when he noticed an unfamiliar car in his driveway and his front door open. The homeowner grabbed his gun when he found the two trying to steal his other guns. When he saw one of the burglars had a shotgun in his hand, he fired, hitting one of the burglars in the arm. The victim held them at gun-point until police arrived. The suspect who was shot was 17. The other suspect, an adult, wasn't hurt.

● **Carthage, Missouri:** A 62-year-old grandmother was eating lunch with one of her grandchildren when she saw a woman and a boy in her yard, Lt. Aaron Richardson of the Jasper County Sheriff's Office said. She got her gun and waited while the teenage boy broke through her door, then captured him and the woman, Faith Barrick. Police found the pair were suspects in several previous burglaries. Richardson said the grandma may have solved several crimes, adding, "We're thinking of hiring her."

GUN NEWS TICKER - QUICK TAKES ON THE NEWS

● **New York City:** A "Guns = Prison" campaign with displays all over New York City provoked a sharp response from the Citizens Committee for the Right to Keep and Bear Arms, which called it "pandering to social bigotry against guns and the people who own them." One poster said, "Guns Open Doors for Young People - Prison Doors." In small print it said, "Get Caught Carrying an Illegal Gun, Get 3 1/2 years in Prison."

● **Arlington, Virginia:** Republican incumbent Virginia State Senator Jeannemarie Devolites Davis was overwhelmingly defeated in the November election, said gun expert John M. Snyder, because of her teaming up with New York City Mayor Michael Bloomberg on gun control. "Restrictive gun control is a losing proposition for Republicans," Snyder said. Davis lost by 44-percent to 56-percent to Democrat John Chapman "Chap" Peterson. During the campaign, Davis attacked Peterson for his 2005 support of a bill in the Virginia legislature to exempt concealed firearm permit holders from a ban on firearms on school property while in their vehicles or dropping off or picking up their children. Bloomberg urged Virginia voters to re-elect Davis, which may have been counterproductive.

● **Little Rock, Arkansas:** Arkansas State Attorney General Dustin McDaniel has said he will join a brief to be filed with the U.S. Supreme Court saying the constitutional right to bear arms extends to individuals, not just members of a state militia. The Supreme Court has agreed to hear the case of District of Columbia v. Heller, and McDaniel said he will join a Texas brief declaring support for an individual's gun rights.

● **Eagle Point, Oregon:** Six-year-old first-grader Ryan Douglas was suspended from Little Butte School for drawing a stick figure shooting another in the head with a gun and allegedly threatening students. The boy's father, Douglas Weathers, said "He's not a violent kid. He did not mean any harm." The drawing was inspired by an episode of "The Simpsons" in which a cartoon character shows a drawing of a student being shot by a gun. Mr. Weathers is considering moving his son out of the irrational bigotry of that school.

● **Ann Arbor, Michigan:** Chief Judge Sylvia James of Inkster's 22nd District Court will not be charged over taking a loaded gun to a Detroit Metropolitan Airport checkpoint. Washtenaw County prosecutors decided not to charge her because investigators couldn't prove she intentionally took the gun to the checkpoint. James has a concealed weapons permit because of threats against her life. She was on her way to a lawyers conference in Atlanta. She said, "In my haste to catch a flight I forgot to remove the weapon from my purse."

● **Chicago Illinois:** Gun control advocates in the Illinois Council Against Handgun Violence handed out their 2007 awards in Chicago with an eye on the U.S. Supreme Court, aware that the nine justices may have the biggest impact on gun control in history when they hand down a decision next year on the constitutionality of Washington, D.C. gun ban. They gave their "2007 Abraham Lincoln Award" to anti-gun U.S. Sen. Richard Durbin, who remarked that the gun rights case will probably be resolved by a 5-4 court decision.

● **Washington, D.C.:** New York Senator Hillary Rodham Clinton supports giving drivers' licenses to illegal aliens, but she opposes right-to-carry statutes that provide concealed carry licenses for law-abiding American citizens and others who are here legally, the Citizens Committee for the Right to Keep and Bear Arms (CCRKBA) recently said in a statement. CCRKBA noted, "Sen. Clinton must think people in this country illegally are entitled to greater rights than citizens and others who are here legally. Maybe it's because she knows that illegal aliens would vote for her, while law-abiding American gun owners won't." Mrs. Clinton was the only presidential candidate, either Republican or Democrat, who ignored an invitation to appear at the recent Gun Rights Policy Conference in Ft. Mitchell, Kentucky, near Cincinnati. The annual conference is co-sponsored by CCRKBA and the Second Amendment Foundation.

Parting Shot

THE SUPREME COURT AND ITS OPTIONS

Now that the U.S. Supreme Court has agreed to hear the appeal of *District of Columbia v. Heller*, what has it gotten itself - and all Americans - into? And how is it likely to get us out?

The nub of the case is clear: does the Second Amendment protect a collective or an individual right? The answer, either way, will affect every gun law on the books. And that answer, whatever it is, will last a long, long time. It is not the kind of case the high court can duck. Or is it?

Realistically, the court has only three options:

First, it *can* duck. It can find that the Second Amendment, with its odd grammar and strange punctuation - *A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed* - is so cryptic it doesn't do anything anymore. It's just a relic of a bygone era.

That's the least likely outcome. Nobody would buy a ruling that leaves a tenth of the Bill of Rights meaningless. And everyone would wonder what *other* parts of the Constitution the court might declare to be relics.

Second, the court can find that the Second Amendment doesn't grant individual rights, but only protects the right of states to arm their militias without federal interference. This would end the DC case, but would raise the specter of civil war: Okay, states have a constitutional right to arm their "state armies" without federal intrusion. What if they don't like federal gun-control laws? Every law-abiding citizen could be enrolled in the state militia and issued machine guns, humvees, tanks and bombs. And maybe maps of a few other - less well-armed - states.

That's the second least likely outcome, and not just because of our somewhat fanciful potential scenario.

Third, the court can find that the Second Amendment supports an individual right of law-abiding citizens to possess firearms, at least of the type found in normal use. As with other rights - think of the freedom of speech, which is limited by all kinds of libel and incitement laws - this right is subject to reasonable regulation, which stops far short of a ban.

This would be the most likely and least radical outcome. For one thing, it's consistent with public opinion. Most Americans think the Second Amendment gives them a right to own a gun. Then, too, more than 40 states *do* have constitutions that provide for a right to arms.

But we're being realistic here. It wouldn't end the gun control battle. Gun-haters will always push reasonable regulation to unreasonable lengths.

Alan M. Gottlieb

Joseph D. Tartaro

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