

The Gottlieb-Tartaro Report

THE INSIDERS GUIDE FOR GUN OWNERS

Issue 108

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Dear Subscriber,

With Congress heading into winter recess, it's clear that **some key pro-gun legislation will be pushed off the 2003 calendar into January 2004--into election year--**which is likely to threaten any real progress.

The most important bill, **S.659**, which **bans frivolous lawsuits** against firearms manufacturers and dealers, failed to get through the Senate after a long struggle.

Senate Majority Leader BILL FRIST (R-TN) and Sen. LARRY CRAIG (R-ID), who introduced the bill in the Senate, **skillfully guided the immunity bill past many threats of Democrat filibusters and procedural obstacles**, but at the last minute *couldn't get opponents to agree to limit debate*.

Senate Minority Leader TOM DASCHLE (D-SD) co-sponsored the bill, drawing angry responses from fellow Democrats, but solidifying his South Dakota re-election. **You have to give him credit.**

The bill is not dead, but will face the customary **election-year waffle** -- supporters and opponents both may shift their stand on this legislation as they calculate how it might hurt or help their chances at the ballot box.

Another issue to be pushed into 2004 is the re-enactment of the 1994 CLINTON "assault weapon" ban, which expires next year. Politicians are likely to increase efforts to tie the ban re-enactment to S. 659, the lawsuit immunity bill, **trying to give constituents from both sides some of what they want.**

Some gun bills squeaked in through 2003's back door, for example, **the Armed Cargo Pilots bill**, which would allow cargo pilots to join commercial airline pilots in being allowed to carry firearms.

It **passed the Senate** (S. 1657), but was **laid aside in the House** (H.R. 3262), only to **have its substance included** in a fiscal reauthorization measure for the FAA, which has been rolled into an omnibus appropriations bill that has yet to pass.

Here's an oddity: Rep. JAMES SENSENBRENNER (R-WI) pushed the Justice Department-backed H.R. 3348, **reauthorization of the ban on plastic guns**, through the House on a voice vote (fewer than 30 Representatives happened to be on the House floor at the time to say "Aye").

Rep. SENSENBRENNER convinced the House leadership to allow the rules of the House to be suspended so he could take the bill directly to the floor, skipping the committee process. The worry is that plastic guns can't be detected.

The oddity is that a completely plastic gun doesn't exist. There's no technology for it. It's like banning Darth Vader's lightsaber. Nobody knows how to build one. But unless some bright young plastics nerd invents one, Congress has made the world safe from yet another non-problem.

Something else to watch for in the 2004 session of Congress: Democrat Sen. FRANK LAUTENBERG of New Jersey has introduced legislation that would **require the Justice Department to tell law enforcement officials when someone on a terrorism watch list buys a gun.**

Sounds like a simple idea, but **the Justice Department can't do it.** It violates the privacy provisions and record-keeping restrictions of the Brady Act.

Are you ready for 2004?

Also in this issue: ● *The good side of guns* ● *Problems with Maryland's bullet fingerprint database* ● *9th Circuit overturns machine gun conviction(!)* ● *Music group Sister Sledge whacks America in Brit Parliament* ● *Daisy air rifles won't be recalled* ● *Equal justice examined in our Page Eight 'Parting Shot'*

**ON THE
FEDERAL
LEVEL**

GUNS STOP CRIME

Thousands of gun owners all across America stop crime with their firearms every year. They show the indisputable value of the Second Amendment and the good role of guns in our culture.

Here are a few vignettes of the good side of guns:

● **Rockford, Illinois:** Lia Mercuri, co-owner of Vinny's Pizza, foiled an armed robbery by firing two warning shots over the heads of two men who stormed through the shop's back door and attacked Mercuri's brother, one using a hammer, the other carrying a rifle. Police captured the fleeing suspects.

**THE GOOD
SIDE OF GUNS**

● **Seattle, Washington:** A robber took cash from the till of specialty store La Bodeguita, then shot the 58-year-old store owner in the hand. The bullet also hit a customer in the face. The owner pulled out his own handgun and shot the robber three times. He fled but collapsed outside the store. Police took the suspect to Harborview Medical Center. A 20-year-old man in a vehicle in an alley behind the store was arrested on investigation of robbery and assault.

● **Jackson, Mississippi:** Robbery suspect Lewis Chandler was chased from the scene of assaulting Hebron Morris and his sister Dean Alexander by three nearby church handymen who heard their cries for help. Maintenance man Robert Wilson, armed with his handgun, and co-workers Dennis Chism and Joe Turner chased Chandler on foot. Wilson finally subdued the man, telling him, "You stop or I'll blow your head off." Morris caught and held the suspect at bay with his shotgun. Chandler was jailed on two counts of burglary and four robbery counts.

● **St. Louis, Missouri:** A 73-year-old man was watching TV when an intruder pushed his wife into the living room holding shears at her neck. Allowed to get his wallet, the homeowner retrieved his pistol instead and shot the intruder to death. Police officers praised the outcome.

● **Indianapolis, Indiana:** David Humphries was rinsing off his van at a car wash when a 17-year-old white male with a bandana covering his face approached and demanded money. Humphries hosed the man, thinking it was a joke. The man pulled a semi-automatic rifle and threatened to kill Humphries, who reached in his coat as if to get his wallet, but pulled out his own gun and shot the robber, who fled with a bullet wound and was later apprehended. Humphries was not charged.

● **Olympia, Washington:** Josh Lenoue saw three men taking parts from a stolen car and held them at gunpoint until police arrived and arrested them.

● **Coatesville, Pennsylvania:** Omar Reid, in bed at home, was awakened by two intruders threatening to kill him if he did not give them money. Reid reached into his nightstand, got out his handgun and shot Rameek Neal, 22, who was taken by police to a hospital. The second intruder fled and was not captured.

● **Beaumont, Texas:** Two black male suspects armed with handguns forced open the door of a couple's home and demanded money. The husband saw his wife forced to the floor, retrieved a 12-gauge shotgun from the bedroom and confronted the intruders. They ran out the back door and were not apprehended.

● **Tampa, Florida:** Engine rebuild mechanic Benjamin Tate was approached at work by a man threatening to shoot him if he didn't give him money. This time he used his .357-caliber Magnum and shot his assailant, critically wounding him.

● **Galt, California:** Two robbers at Compadres Market demanded money from clerk Jose Gutierrez, 34. One suspect shot the clerk in the back, but the clerk then shot Tomas Villanueva and killed him. Gutierrez is recovering, but the bullet is too close to his spine to remove.

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ILLINOIS BILL INVITES TERRORISTS TO BUY GUNS

Senate Bill 67 would require the Illinois Secretary of State to issue **drivers' licenses to persons lacking Social Security Numbers (SSN) -- including undocumented aliens.**

The Illinois State Rifle Association (ISRA) called the bill "an unprecedented threat to homeland security."

Once a person has acquired an Illinois driver's license, **they may then apply for an Illinois Firearm Owners Identification (FOID) card.** Possessors of FOID cards are allowed to purchase firearms from licensed firearm dealers. The danger is clear.

IN THE STATES

MINNESOTA CONCEALED CARRY LAW MEETS MORE RESISTANCE

Anti-gun activist **Kim Stanley** has pledged that the group she founded, **Repeal Conceal Coalition**, will work to tie the issue to school violence as it works to get the concealed carry law repealed during the 2004 session of the Legislature.

The new tactic will try to **get school leaders to endorse repeal.**

WISCONSIN GOVERNOR'S VETO OF CONCEALED CARRY BILL CRITICIZED

The **Citizens Committee for the Right to Keep and Bear Arms (CCRKBA)** has denounced Wisconsin Gov. Jim Doyle's veto of a reasonable concealed carry bill as **an act of political demagoguery.**

CCRKBA Executive Director Joe Waldron said, "Gov. Doyle's veto is an insult to every law-abiding Wisconsin gun owner who believes in the right of self-defense." **Waldron urged Wisconsin lawmakers to return to the capitol and override the governor's veto.**

FLORIDA BILL TO PROTECT GUN OWNER PRIVACY CLEARS PANEL

Florida House Speaker Johnnie Byrd supports a bill passed by the House Judiciary Committee that, with some exceptions, **prohibits police from keeping a computer database of people who sell guns at pawn shops.**

Two years ago, after complaints by gun owners, the Florida Department of Law Enforcement agreed to destroy records of gun transactions after 48 hours. **But many local departments maintain the data.**

Police in Pinellas and Hillsborough criticized the bill, which is set for a vote by the full House next March.

OHIO CONCEALED CARRY BILL MEETS NEW OBSTACLE

Ohio House Speaker Larry Householder has agreed to negotiate with **Gov. Bob Taft over the governor's demand** that the concealed carry bills passed by the House and Senate **require the state to disclose the names of people who are issued permits.** The bill is now in conference to resolve House-Senate differences.

House and Senate leaders, fearing that **public records would enable gun-seeking criminals to target gun owners**, initially rejected Taft's demand, but Householder is trying to avert a threatened veto.

MARYLAND POLICE OPPOSE EXPANDING GUN 'FINGERPRINT' DATABASE AS FLAWED

After finding **substantial problems** with the state's \$2.1-million ballistic fingerprinting database, Maryland State Police have recommended **that it not be expanded.** A 40-page report by the director of the agency's crime lab concluded that the database should continue in operation, but not be expanded because it is not working properly.

MAINE GUN SHOW BILL PASSES COMMITTEE

A bill to **require those who sell guns at gun shows to perform a background check** has passed the House Judiciary Committee. Gun dealers are presently required by federal law to perform background checks, but private sellers are not required to do so. The bill has no effect on people who sell guns privately through newspaper ads or by word of mouth. The bill goes to the full Legislature in January.

GUN INDUSTRY ATTORNEYS DIDN'T FORFEIT PRIVILEGE

The long-standing principle that **attorneys can't be forced to divulge privileged information** was upheld in a recent firearms industry appeal to the 2nd Circuit Court of Appeals.

The decision in *John Doe Co. v. United States* **overturned a lower court judge**, and ruled that the Southern District U.S. Attorney's Office **is not entitled to receive confidential notes and other privileged attorney work product** simply because the attorneys *volunteered a letter on the subject of the case* to prosecutors.

**ON THE
LEGAL FRONT**

The anonymous company was in court because *it had made its facilities available to third parties* to engage in purchases and sales of firearms, but was not involved in the transactions themselves, yet received a commission for use of the facilities.

Federal prosecutors convened a grand jury to investigate whether **the company required a federal firearms license** and whether **the third-party transactions violated firearms laws**.

When the company learned of the investigation, **it sent a letter to the prosecutor** saying it acted in good faith belief that **its activities were legal** and that it had been assured by the Bureau of Alcohol, Tobacco, Firearms and Explosives in face-to-face meetings that **it did not need a license**.

The government then prompted the grand jury to issue **a subpoena of notes taken by the company** at those meetings with the BATF. The company objected that its notes were privileged. The prosecutor then asked the lower court to compel production of the notes. The lower court judge agreed and so ordered.

The company appealed to the Second Circuit, which ruled in its favor. The government is expected to appeal the ruling.

9TH CIRCUIT SURPRISE: APPEALS COURT OVERTURNS MACHINE GUN CONVICTION

A three-judge panel of the 9th U.S. Circuit Court of Appeals of San Francisco **has reversed the conviction of a Mesa, Arizona man, Robert Stewart, for possessing five machine guns**. The court ruled that the congressional ban does not apply to homemade machine guns and their parts **because they were never in the stream of commerce**.

In ruling that the conviction was **an abuse of the government's authority to regulate interstate commerce**, the panel noted that Stewart had made the machine guns, including all their parts, from scratch, obtaining nothing from interstate commerce and not placing anything into interstate commerce.

Coming from the ultra-liberal 9th Circuit appeals court, this ruling is quite a surprise. Striking down a government exercise of the Constitution's commerce clause as abusive goes against the 9th Circuit's **endless support of federal power**.

Although **hailed by gun rights advocates as striking a blow for freedom**, the ruling has no practical value except for attorneys as a precedent in future cases, according to Stewart's attorney Thomas Haney of Phoenix. Few people have the skills to build a machine gun from scratch, as Stewart did, he said.

The value of the Stewart case as a federal precedent would not apply to laws passed by many states, including Arizona, that ban rapidly firing machine guns. Such laws would withstand court scrutiny regardless whether the gun was homemade.

GROUP FILES SUIT AGAINST MICHIGAN COUNTY GUN PERMIT RULES

The **Michigan Coalition for Responsible Gun Owners** has filed suit against the Kent County Gun Board, saying **its requirements for concealed-weapons permits go beyond what state law intends**.

Kent is the only county in Michigan to require gun permit applicants to submit **a mental health statement signed by a licensed health care professional**.

Other counties allow applicants to self-report whether they ever have been diagnosed with a mental illness.

Daniel Bambery, lawyer for the gun owners coalition, said, "Whether the forms are a good or bad idea, it's not state law and shouldn't be imposed."

APPEALS COURT REVIVES WRONGFUL DEATH SUIT AGAINST GUN INDUSTRY

The 9th U.S. Circuit Court of Appeals, acting more typically than in the Stewart case, has reversed an earlier decision and ruled that **a wrongful death suit filed against the gun industry by families of victims in a 1999 shooting can proceed.**

ON THE LEGAL FRONT

The 2-1 decision reinstated *Ileto v Glock*, named for Joseph Ileto, a Filipino postal worker who was killed August 10, 1999, when Buford Furrow opened fire at the North Valley Jewish Community Center in Grenada Hills, California.

The suit alleges that Glock Inc., China North Industries Corp., RSR Management Corp. and RSR Wholesale Guns Seattle Inc. **were responsible for Ileto's death and the wounding of five others by facilitating easy access to guns by purchasers like Furrow.** Furrow is serving life in prison without parole.

Oddly, **the gun Furrow used was first put on the commercial market by the police department of Cosmopolis, Washington, which is not a defendant.** Why the Cosmopolis police department is not on trial is an open question for the plaintiffs.

DC DISTRICT COURT RULES AGAINST FUND FOR ANIMALS

The rabid animal rights group **Fund for Animals** has no right to reconsideration of an earlier ruling that they had no standing to sue the U.S. Fish & Wildlife Service over its authority to issue trophy importation permits on legally harvested Argali sheep coming from three Central Asian countries, ruled the U.S. District Court for the District of Columbia.

It was a victory not only for the federal agency, **but also for the pro-hunting groups that successfully filed as intervenors in the case, Safari Club International and the Sportsman's Alliance Foundation.**

NEW MEXICO ATTORNEY GENERAL DEFENDS HANDGUN LAW

Voice for Children, a child-advocacy group, and Dr. Victor LaCerva, a Santa Fe medical doctor, have filed a lawsuit **asking the New Mexico Supreme Court to declare the state's new concealed carry law unconstitutional.**

Attorney General Patricia Madrid and the Department of Public Safety defended the constitutionality of the law in written arguments submitted to the state Supreme Court.

The issue is the wording of a clause in the state constitution, "...but nothing herein shall be held to permit the carrying of concealed weapons." A.G. Madrid noted that **the provision does not express a constitutional right to carry concealed weapons, but it does not prohibit the state from allowing it.**

ST. LOUIS LAWSUIT AGAINST GUN INDUSTRY DISMISSED

Judge Emmett O'Brien has **dismissed the city of St. Louis' lawsuit against gun distributors and trade organizations** seeking reimbursement for costs associated with gun-related injuries, a month after he threw out similar charges against gun manufacturers.

Judge O'Brien wrote in his Opinion that "issues of both logic and fairness" favored dismissing the case, which was filed in April 1999.

GRUNOW'S ATTORNEYS FILE APPEAL DISMISSING HER ANTI-GUN CASE

Pam Grunow, whose husband Barry Grunow was killed by Nathaniel Brazill, has **filed an appeal** in her case against gun distributor Valor Corp.

The jury originally found Valor partially responsible for Grunow's death, but a judge reversed the verdict earlier this year.

CITY OF MINNEAPOLIS JOINS HANDGUN LAWSUIT

The city of Minneapolis has joined a group of churches in a lawsuit **challenging Minnesota's new handgun law.** Attorneys for the city and 27 religious congregations and organizations argue that the gun law violates the Minnesota Constitution because of various technical reasons.

AUSTRALIAN OLYMPIC SHOOTING GOLD MEDALIST ASKS FOR GUN LICENSE

Michael Diamond, Australia's double gold medalist in shooting has applied to get his gun license back after an "apprehended violence order" against him was revoked, police have confirmed.

AROUND THE WORLD

Diamond is still facing charges of assaulting his former girlfriend Tracey Kennedy and of failing to properly secure a handgun in a case which is ongoing.

His gun license was suspended after an interim apprehended violence order was granted to Kennedy, effectively preventing Diamond from competing. But a court revoked the order, allowing him to apply to get his license back, despite the outstanding police charges against him.

Without the license, Diamond is unable to train for the 2004 Olympics in Athens.

CANADA'S FIREARMS REGISTRY COST TO HIT \$1 BILLION EARLIER THAN EXPECTED

Costs are piling up at the troubled federal firearms registry and could top the \$1 billion mark a year earlier than forecast.

The total cost of the registry was originally budgeted at \$2 million, but estimates show the program cost will exceed \$814 million by next March, the end of the 2003-04 fiscal year.

Federal officials now estimated the total cost of the registry will hit \$1 billion sometime in early 2005.

The opposition Canadian Alliance is highly critical of the program. Alliance Member of Parliament Garry Breitkreuz said, "This is going to go over the \$1 billion mark a full year ahead of schedule and most of it is due to the astonishingly poor management of the program."

AUSTRALIAN TOWN HOLDS A GUN AMNESTY AND NOBODY COMES

The town of Orange in the Australian state of New South Wales lies nearly 200 miles west of Sydney in a wheat and fruit growing area with some mining and tourism. It also has the Australian gun ban.

Senior Constable Bob Croker of Orange Police is monitoring a gun amnesty that started October 1. Nobody much is showing up to surrender their arsenals of whatever it is the police think the citizens might own.

Senior Constable Croker said, "Weapons can be surrendered at the station with no questions asked."

The local wheat and fruit farmers and miners seem to think that they can keep their weapons at home with no questions asked.

Croker said it was unclear why the amnesty had yielded a limited response, but is encouraging anyone to come forward who may wish to surrender a gun or a knife.

ZIMBABWE POLICE TO CONDUCT FIREARMS AUDIT

Police in Zimbabwe have embarked upon a month-long countrywide firearms audit in which all gun owners must bring their guns and firearm certificates to their nearest police station for verification.

The audit was prompted by rising crime statistics. A total of 323 armed robberies were committed in Harare between January and October this year compared to 276 cases during the same period last year.

Guns smuggled from neighboring South Africa and Mozambique are proliferating in Zimbabwe.

ANTI-GUN AMERICANS CRITICIZE AMERICA IN UNITED KINGDOM PARLIAMENT

U.S. disco queens Sister Sledge were invited to the U.K. House of Commons recently on the same day a parliamentary report into gun crime was published. Gun crime has risen steeply since the U.K. virtually banned gun ownership.

Joni and Debbie Sledge of the music group hammered the U.S. and its "gun culture" in Parliament and told Brits, "don't follow us."

GUN NEWS TICKER - QUICK TAKES ON THE NEWS

●**Moline, Illinois:** The Moline Police Department wants a bronze statue to honor police officers killed in the line of duty. He's paying for it with money raised by a raffle--with an AR15 rifle as the prize. Anti-gun nuts protested and offered a hunting rifle instead, but the police memorial committee defended their decision and will carry on with the raffle for the rifle--AR15, thank you.

●**Geuda Springs, Kansas:** Residents of this tiny south-central Kansas community of 210 have passed an ordinance requiring most households to have guns and ammunition. Noncomplying residents would be fined \$10 under the ordinance. The disabled, paupers and conscientious objectors would be exempt. Councilman John Brewer said, "This ordinance fulfills the duty to protect by allowing each individual householder to provide for his or her protection.

●**Washington, D.C.:** A new report confirms that the nation's capital is also the murder capital--it had the most murders per capita last year of any large city in the United States. The data comes from the FBI and shows D.C. had a murder rate twice that of Los Angeles and six times worse than New York City. Gun ownership is virtually banned in D.C. but crooks with guns are everywhere.

●**U.S. nationwide:** In the 2000 election cycle, gun rights groups gave disproportionately to Republican candidates (93 percent) compared to Democrats (7 percent). Anti-gun money was even more lopsided: Democrats got 97 percent and only 3 percent went to Republican candidates.

●**Bismark, North Dakota:** The State of North Dakota Office of Attorney General has announced three additions to its concealed carry reciprocity agreements: Arizona, Oklahoma and Tennessee. Reciprocity means that states mutually recognize each others' concealed carry permits as valid.

●**Washington, D.C.:** In a finding that could affect thousands of criminal cases, the National Academy of Sciences has concluded that some techniques the FBI has used for decades to match bullets to crimes are flawed or imprecise. The report makes about a half-dozen recommendations to improve the FBI lab's science used to match bullets through their lead content.

●**Rogers, Arkansas:** Daisy, the air rifle manufacturer whose products are synonymous with youngsters learning to shoot, has won a favorable settlement in a Consumer Product Safety Commission (CPSC) lawsuit, avoiding a financially devastating recall of two popular air rifle models. Current CPSC Commissioner Mary Sheila Gall berated the previous commissioner, Clinton-appointed Ann Brown, for bringing the case against Daisy. Gall called Brown's actions an "outrageous miscarriage of justice" and "abuse of the process of public policy." The Clintonistas anti-gun jihad even extended to kids' BB guns.

●**Richmond, Virginia:** Richmond's ordinance requiring people to obtain a permit from the police department before buying a gun has been determined unconstitutional by the city attorney. The ruling came in response to a news story in which a Richmond times-Dispatch reporter purchased a handgun from Galyan's, a sporting goods store at Stony Point Fashion Park, without the required permit in order to publish a sting story against the gun dealer. However, the news article instead prompted the city attorney to rule the ordinance unconstitutional.

●**Scottsdale, Arizona:** Smith & Wesson Holding Corp., parent company of handgun maker Smith & Wesson Corp., was named "2003 Hunting and Shooting Sports Firearms Manufacturer of the Year" by the National Association of Sporting Goods Wholesalers. It was the first time Smith & Wesson was chosen for one of the industry's awards.

●**Washington, D.C.:** John Snyder, public affairs director of the Citizens Committee for the Right to Keep and Bear Arms, has announced that Sen. Charles E. Schumer of New York gets the Civil Liberties Infringement Prize for his leadership in blocking an up-or-down judicial confirmation vote on the nomination of Alabama Attorney General Bill Pryor. "A genuine reactionary," Snyder said of Sen. Schumer.

Parting Shot

EQUAL JUSTICE FOR ALL?

It's not that prosecutors give police a break you wouldn't get. It's that they tell you the light penalties dished out are "typical."

Well, judge for yourself:

Detroit Police Chief Jerry Oliver packed a loaded .25-caliber handgun in his checked luggage October 18 at Detroit Metropolitan Airport. He got caught.

It's not unknown for police chiefs to be exempted from obeying the laws they enforce on everybody else. Some were worried that Wayne County, Michigan Prosecutor Michael Duggan might not charge Chief Oliver.

Duggan has a very anti-gun reputation. Would he circle the wagons and defend Detroit's anti-gun top cop?

Joe Waldron, executive director of the Citizens Committee for the Right to Keep and Bear Arms, publicly challenged Duggan to do what was right and charge the chief, just like he would you or me.

Well, after thinking it over for a couple of weeks, Duggan filed a misdemeanor charge of possessing an unlicensed handgun against Oliver, who had just resigned as police chief.

The misdemeanor charge is punishable by up to 90 days in jail.

If it had been you or me, you think that might have been a felony charge? Well, maybe, maybe not.

If it had been you or me, you think we might have gotten all 90 days in jail? Well, maybe, maybe not.

Then Oliver's attorney Anthony Chambers worked out a plea agreement with prosecutors:

- Oliver enters a no contest plea.

- Prosecutors promise to dismiss the charge in 90 days if Oliver stays out of trouble.

- Oliver pays a \$250 fine.

That's it. No jail time. No permanent record.

34th District Judge Brian Oakley asked at the hearing whether Oliver wanted to comment. Oliver responded, "No."

Maybe that was because he couldn't trust himself to keep from laughing at the soft deal he just got.

Doug Baker, the Wayne County chief for special prosecutions, said Oliver's sentence was "typical" for such charges.

You believe that, don't you?

Alan M. Gottlieb

Joseph D. Baker

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