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by virtue of possession, and more; that she obtained much more than she could claim under the letter of the Treaty of Paris; and that she obtained nearly 900 square miles of territory in the basin of the upper St John over and above that awarded by the king of the Netherlands. She conceded an area of 150 square miles in the basin of the upper Connecticut River. She also conceded a strip between the 45th parallel and the 'old line' with an area of 73 square miles, but, as the 'old line' is in places south of the 45th parallel, she received, east of St Regis, a strip containing  $11\frac{1}{2}$  square miles. So far as these 'strips' were concerned, the United States and Great Britain had valid titles by virtue of occupation, and the concessions were simply validations. In addition to the foregoing the Ashburton settlement ended a controversy that had disturbed the relations of the two countries for nearly sixty years; that had, on several occasions, brought two great nations to the verge of war; and that had seriously interfered with commercial intercourse. Finally, it is worthy of note that the commission appointed to adjust the respective claims of New Brunswick and Quebec to the area west of the 'due north line' awarded to Great Britain by the Ashburton Treaty, reported in 1848, six years later, 'that a tract of country lies between the north highlands westward of the due north line, and the line of the United States, which, according to the strict legal rights of the two provinces, belongs to neither, . . . and which, in 1763, formed part of the ancient territory of Sagadahock.' This 'tract of country' was confirmed to Great Britain by the Ashburton Treaty.

#### THE NORTHEASTERN BOUNDARY NEGOTIATIONS

While the negotiations were carried on at Washington by Secretary of State Daniel Webster and Lord Ashburton, those negotiations, so far as they concerned the northeastern boundary, were in a very real sense participated in by commissioners of Maine and of Massachusetts appointed at the suggestion and request of President Tyler. In the letters of Webster to the Governors of Maine and Massachusetts is dated April 11, 1842 (published correspondence, 64-66), it was expressly stated that no conventional line would be agreed on "without the assent of such commissioners"; and the first formal note written on the northeastern boundary question was that of Ashburton to Webster of June 13, 1842, the day on which Webster had his first conference with the commissioners of the two States, who were Edward Kavanagh, Edward Kent, John Otis, and William Pitt Preble, for Maine, and Abbott Lawrence, John Mills, and Charles Allen, for Massachusetts (*ibid.*, 34-37, 71, 72).

Massachusetts had property interests which were affected by any settlement of the northeastern boundary, for in the public lands of Maine a half interest was reserved by Massachusetts upon the separation (act of June 19, 1819, Laws of the Commonwealth of Massachusetts, 1819, 248-60; and act of March 3, 1820, 3 Statutes at Large, 544); and the frontier in dispute was very largely that of Maine, though partly that of New Hampshire, Vermont, and New York. Indeed, the Legislature of the State of Maine did not consider that the Government of the United States possessed "the constitutional power to conclude any such negotiation without the assent of Maine" (published correspondence, 70), a view which was also expressed by the Legislature of Massachusetts (*ibid.*, 64); that theory should doubtless be considered in the light (*inter alia*) of Article 5 of the Treaty of Ghent (Document 33) and the proceedings thereunder, and particularly of the fact that under that article and the convention

of September 29, 1827 (Document 58), a reference had been made of the northeastern boundary question to arbitration by the King of the Netherlands.

That constitutional theory, moreover, had been explicitly supported by the Federal Government during the negotiations with Great Britain which followed the decision of the King of the Netherlands of January 10, 1831, regarding the northeastern boundary, and the subsequent refusal of the Senate, on June 23, 1832, to accept that award; the British Government at various times and in varied language had been officially informed that "under the peculiar structure of our political system, the Federal Government cannot alienate any portion of the territory of a State, without its consent" (Secretary of State Forsyth to Sir Charles R. Vaughan, D.S., 6 Notes to the British Legation, 18, April 28, 1835). President Jackson in 1832 had had negotiated and signed an agreement between the United States and the State of Maine providing for the relinquishment to the United States of any rights of that State in the disputed territory; the text of that agreement is printed in the notes to Document 58, which should be consulted generally; that agreement, however, failed to go into force, owing to the decision of the Maine Legislature that a referendum thereon would be necessary (see Burrage, *Maine in the Northeastern Boundary Controversy*, ch. X). So far as the Executive could decide such a question, the constitutional view of the State of Maine had been accepted by the Government of the United States, although the extreme Maine view, which went so far as to maintain that the convention of September 29, 1827, with Great Britain (Document 58) "tended to violate the Constitution of the United States and to impair the sovereign rights and powers of the State of Maine, and that Maine is not bound by the Constitution to submit to the decision, which is or shall be made under that convention" (Resolves of Maine, 1831, 245, resolve of February 28, 1831), was not supported at Washington (D.S., 6 Notes to the British Legation, 16, April 28, 1835):

If the distinguished Arbitrator agreed upon had found himself able to come to a decision upon the subject satisfactory to his own judgment, the Government of the United States would not have hesitated for a moment, whatever might have been its opinion of the justice of such decision, to have united with His Majesty's Government in carrying it fully and immediately into effect.

In a long letter to Governor Kent, of Maine, dated March 1, 1838, reviewing the history of the northeastern boundary negotiations up to that time, Secretary of State Forsyth thus restated the constitutional principles involved as seen by President Van Buren; and it is to be noted that "imperious public necessity" was mentioned as a possible ground of competence (to negotiate a cession) which otherwise the Federal Government would lack (D.S., 29 Domestic Letters, 336-66; Richardson, III, 442-59):

The principles which have hitherto governed every successive administration of the Federal Government, in respect to its powers and duties in the matter, are—

1<sup>st</sup> That it has power to settle the boundary line, in question, with Great Britain, upon the principles and according to the stipulations of the treaty of

1783, either by direct negotiation, or, in case of ascertained inability to do so, by arbitration; and that it is its duty to make all proper efforts to accomplish this object by one or the other of those means.

2<sup>d</sup> That the General Government is not competent to negotiate, unless perhaps on grounds of imperious public necessity, a conventional line involving a cession of territory to which the state of Maine is entitled, or the exchange thereof for other territory not included within the limits of that State, according to the true construction of the treaty without the consent of the State.

In these views of his predecessors in office, the President fully concurs, and it is his design to continue to act upon them.

In the similar letters of Webster to the Governors of Maine and Massachusetts dated April 11, 1842 (D.S., 32 Domestic Letters, 288-91; published correspondence, 64-66), were these paragraphs:

The opinion of this Government upon the justice and validity of the American claim has been expressed, at so many times, and in so many forms, that a repetition of that opinion is not necessary. But the subject is a subject in dispute. The Government has agreed to make it matter of reference and arbitration; and it must fulfil that agreement, unless another mode for settling the controversy should be resorted to, with the hope of producing a speedier decision. The President proposes, then, that the Governments of Maine and Massachusetts should, severally, appoint a Commissioner or Commissioners empowered to confer with the authorities of this Government upon a Conventional line, or line by agreement, with its terms, conditions, considerations and equivalents, with an understanding that no such line will be agreed upon without the assent of such commissioners.

This mode of proceeding, or some other which shall express assent before hand, seems indispensable, if any negotiation for a Conventional line is to be had, since if happily, a treaty should be the result of the negotiation, it can only be submitted to the Senate of the United States for ratification.

The Legislature of Massachusetts had previously (March 3, 1842) granted plenary power to "the governor, with the advice and consent of the council, . . . to adopt such measures to secure the rights and interests of the Commonwealth in said territory, and to produce an honorable and satisfactory adjustment as the emergency may demand"; under that authorization the three commissioners of Massachusetts were named (Acts and Resolves Passed by the Legislature of Massachusetts, 1839-42, 564; published correspondence, 63-64, 66-69); Webster was formally notified by the Secretary of State of Massachusetts of their appointment (D.S., Northeastern Boundary, envelope 18, letter of John P. Bigelow of May 28, 1842).

The Legislature of Maine was summoned in extra session; and a preamble and five resolutions were adopted on May 26, which included the following (Acts and Resolves Passed by the Legislature of Maine, 1842, 111; published correspondence, 69-71):

*Resolved*, That there shall be chosen, by ballot, in convention of both branches of the legislature, four persons who are hereby constituted and appointed commissioners, on the part of this state, to repair to the seat of government of the United States, and to confer with the authorities of that government touching a conventional line, or line by agreement, between the state of Maine and the British provinces, having regard to the line designated by the treaty of 1783 as uniformly claimed by this state, and to the declarations and views expressed in the foregoing preamble, and to give the assent of this state to any such conventional line, with such terms, conditions, considerations and equivalents as they shall deem consistent with the honor and interests of the state; with the understanding that no such line be agreed upon without the unanimous assent of such commissioners.

President Tyler was formally notified by the Governor of Maine (John Fairfield) of the election of the four commissioners of Maine (published correspondence, 69, letter of May 27, 1842).

By a resolution of the Legislature of New Hampshire of June 23, 1842, the Senators and Representatives of that State in Congress were requested "to take such measures as may be necessary, during the pending negotiations at Washington relative to the Northern and North Eastern Boundary of the United States, to best sustain the rights of this State to the territory over which we have always heretofore claimed and exercised jurisdiction" (Laws of New Hampshire, June 1842, 599). That resolution, however, was not communicated to President Tyler until July 15, 1842, when the northeastern boundary had been settled as between Webster and Ashburton, with full satisfaction of the claim of New Hampshire; and the participation of the New Hampshire delegation in Congress in the proceedings appears to have been limited to the submission, on July 19, 1842, of a brief statement citing certain documents and papers (see published correspondence, 99-102).

Aside from the formal exchanges of June 17, 1842 (*ibid.*, 38), the written negotiations regarding the northeastern boundary comprised four notes (*ibid.*, 34-37, 39-56), three of Ashburton (June 13, June 21, and July 11) and one of Webster (July 8), with which is to be read its enclosure, the letter of the Maine commissioners to Webster of June 29 (*ibid.*, 72-80); also to be mentioned is a second letter of the Maine commissioners to Webster of July 16 (*ibid.*, 84-91), which, while dated after the accord of the two Plenipotentiaries, was doubtless drafted before the terms thereof were communicated. Moreover, during the period of the correspondence there were informal communications of one sort and another (see *ibid.*, 77, 79).

There was expressed a common desire to avoid "the interminable discussion on the general grounds on which each party considers their claims respectively to rest"; notwithstanding this, a considerable portion of the correspondence was argumentative, with historical and geographical references.

In his first note, of June 13, Ashburton gave no precise indication of a line to be proposed; but he spoke of the portion of the disputed territory which might come to Great Britain as being "as worthless for any purposes of habitation or cultivation as probably any tract of equal size on the habitable globe"; and he even suggested that Great Britain would have given up the controversy "if it were not for the obvious circumstance of its connecting the British North American provinces". That necessity of intercolonial communication was the admitted basis of any agreement for a conventional line; it is mentioned in each of the two above-cited letters of the Maine commissioners and is spoken of with emphasis in the note of Webster, who acknowledged "the general justice and propriety of this object" and agreed that "a conventional line ought to be such as to secure it to England".

Ashburton made the first proposal in his note of June 21, after a formal conference on June 18, of which there is no protocol. He

proposed a line north from the source of the St. Croix to the St. John (the line of 1817-18, regardless of its deviation from the true north), and the line of the St. John "up to some one of its sources" (a somewhat ambiguous expression, but meaning approximately up to the source of the southwest branch as mentioned in Article 1 of the treaty), except for a deviation on the right bank so as to include in New Brunswick the whole of the Madawaska settlement, which extended on both sides of the river "from the mouth of the Madawaska up to that of the Fish river"; and with that boundary he was willing to engage that "all lumber and produce of the forest of the tributary waters of the St. John's shall be received freely without duty, and dealt with in every respect like the same articles of New Brunswick", to agree to the old Valentine and Collins line from the Connecticut to the St. Lawrence, and also to accept the American contention as to the source of the Connecticut.

The note of Webster of July 8 presented and supported the counterproposal of Maine (see the letter of the Maine commissioners of June 29). The yielding of any territory on the south side of the St. John so as to include the Madawaska settlement in New Brunswick was definitely rejected. The counterproposal of boundary, with the concurrence of the commissioners of Massachusetts and with the condition that the United States would furnish to the two States "an equivalent", was the main channel of the St. John (from the crossing point of the due-north line from the source of the St. Croix) to a point three miles above the mouth of the Madawaska; thence straight to the outlet of Long Lake; thence westerly by a direct line to the point where the St. Francis enters Lake Pohenegamook; and thence, continuing the same line, to the highlands dividing the waters of the River du Loup from those of the St. Francis (the various *loci* may be conveniently seen on the map in Moore, International Arbitrations, I, between pp. 148 and 149); and while it was intimated that equivalents to some extent might be found if territorial cessions by Great Britain were possible, such as the island of Grand Manan, the islands in Passamaquoddy Bay, or a portion of the so-called strip between the north line and the St. John, it was understood that the British Plenipotentiary was without power to consent thereto.

The last note written before the verbal accord was that of Ashburton of July 11. He intimated that he would yield on the question of the Madawaska settlement; but he made it clear that he could not and would not yield as to the territory north and east of the St. Francis, which was British territory under the line proposed by the King of the Netherlands; Ashburton's final instructions as to the northeastern boundary had definitely limited him to that line (Ashburton Papers, instruction No. 8, May 26, 1842).

Thus the correspondence ended; as Ashburton urged, it was succeeded by conferences, of which there is no formal record. Sending to the Maine commissioners the note of Ashburton of July 11, Webster wrote on July 12 that he would soon meet with them, "being very desirous of making progress in the business in which we are engaged,

and satisfied that the various parties in interest are as well prepared now to come to a decision as they are likely to be at any time hereafter" (published correspondence, 81).

The position as it was left by the correspondence was this: North from the source of the St. Croix to the St. John and thence as far up the St. John as a point just beyond the mouth of the Madawaska, there was common ground; the portion of the region north of the St. John and between the St. Francis and the Madawaska which Maine had demanded, Ashburton had positively refused; for any agreement to be reached it was essential that that part of the claim of Maine should be abandoned; there was left for discussion an area which may be described as bounded on its three sides by a line as follows: (a) along the upper St. John from the mouth of the St. Francis to Met-jarmette<sup>1</sup> portage (the line proposed by Ashburton); (b) along the highlands from that portage north to a point about due west of the entrance to Lake Pohenegamook; and (c) thence to and through that lake and down the St. Francis to the St. John. The result was that the claim of Maine to any territory between the St. Francis and the Madawaska north of the St. John was given up; and the remaining area in dispute was divided. One may learn something of the verbal discussions from the despatches of Ashburton of July 28 and August 9 (Nos. 15 and 17, quoted below).

An accord on the northeastern boundary was reached by the negotiators for the two Governments just prior to July 15, 1842. That it had not been reached by July 13 appears from Ashburton's despatch No. 13 of that date, as follows (Ashburton Papers):

The last Despatch which I had the honor of addressing your Lordship the 29<sup>th</sup> of last month N<sup>o</sup> 10 on the subject of my negotiations relating to the North Eastern Boundary must have conveyed expectations of an earlier and more satisfactory settlement than I regret to say, I have, with every exertion on my part, been hitherto able to realize. Delay and difficulties have resulted from the present condition of this Government and from the pertinacious resistance of the Commissioners from the North by whom that Government is in this business guided and over-ruled. If I were not warned by the past from over-confidence, I should say that two or three days more could not fail to bring us to a settlement and to the outlines of a convention, but I fear that it may be on rather less favorable terms, than I had given your Lordship to expect. I now proceed to state what has occurred on this subject since I last wrote.

The written proposals submitted by me having circulated among the Commissioners from Maine and Massachusetts, I soon learned that although they differed much among themselves about some parts of them, they all concurred with great earnestness on the one point that we were not to be permitted to cross the St. John, nor consequently to save the southern portion of the Madawaska settlements. I was assured by the best-informed and by the best-disposed persons from New England, that the Commissioners would not dare to return to their own country after making such a concession, and finding indirectly that our pretensions in this respect would be considered extravagant in the Senate, and through the whole country, I made up my mind not further to press this part of our claim, especially as I had no equivalent to offer in territory, and I thought it neither prudent nor expedient to offer any in money.

The Commissioners from Maine submitted to the Secretary of State an answer to my proposals, and after keeping it some time the latter sent it to me with his own formal reply, as no regular communications could take place between the

<sup>1</sup> Now spelled "Metgermette".

Commissioners and me. Your Lordship will find these two papers inclosed. As these discussions began to be talked of abroad, as it was rumoured that serious differences existed, and as I was sensible that injury might arise from drawing the public press into the controversy, I lost no time and sent Mr Webster my note the day after the receipt of his. It is also enclosed herewith. [The three enclosures to this despatch are (a) Webster to Ashburton, July 8, 1842 (published correspondence, 44-50); (b) the Maine commissioners to Webster, June 29, 1842 (*ibid.*, 72-80); (c) Ashburton to Webster, July 11, 1842 (*ibid.*, 50-56).]

These papers will shew your Lordship the present state of this question, and require little explanation. You will see that I invite personal conference in preference to a long desultory controversial correspondence because at this advanced period of the Session, and in the state of parties here, delay might wholly defeat our object, and there can be no doubt that, with some at least, that defeat is much desired.

It will be observed that the informal memorandum of the Maine Commissioners contains some rather coarse insinuations which would hardly have passed unnoticed, if presented in any other form. Your Lordship will see that, though I thought it better to give them no direct attention, they induced me to state our sense of our own rights in rather a firmer tone than I otherwise should have done, and I have reason to believe that this has been of service towards accelerating a termination of these discussions.

I can hardly now hope to communicate by this packet any final settlement of this question. Various rumours will of course reach Europe, as to the probability of any settlement whatever. I am not myself apprehensive of not coming to some terms within the limits of my powers, but the difficulties of my task have certainly increased, owing to the character of the persons who influence this negotiation, and of those whose duty it is more immediately to conduct it with me. I trust your Lordship will be assured that it has not failed to receive from me the most anxious and cautious attention.

July 14 is almost certainly the exact date of the agreement reached by the two Plenipotentiaries regarding the northeastern boundary. In the archives of the Department of State is an annotated copy of the second edition of Dashiell's Map, the edition which was issued after the award of the King of the Netherlands of January 10, 1831, regarding the northeastern boundary; Dashiell's Map, which was based, in its watercourses and its disputed boundary lines, on Map A of the convention of September 29, 1827 (Document 58, the notes to which, particularly p. 356, should be consulted), showed, as originally issued in 1830, the northeastern boundary lines as claimed by the two countries, drawn in green for the United States and in red for Great Britain; the second edition of that map (of which the archives of the Department of State contain some fifty examples, of one or the other of the editions) added a yellow line as the line "of the Arbiter" or the line suggested by the King of the Netherlands; the annotated copy mentioned is signed "W. S. Derrick" in the upper margin; it has, in the handwriting of William S. Derrick, then a senior clerk and soon afterwards Chief Clerk of the Department of State, the notation, "The blue ink marks the proposed conventional line. 14 July, 1842"; the signature and the notation are written in the same blue ink as is the line drawn to show the northeastern boundary according to the Webster-Ashburton Treaty; the evidence is convincing that that copy of Dashiell's Map was annotated by Derrick on July 14, 1842, to show the agreement of Webster and Ashburton then reached (see "An Annotated Dashiell's Map", in *American Historical Review*, XXXVIII, 70-73); and it may be added that it was William

S. Derrick who took to London for exchange the United States instrument of ratification of the Webster-Ashburton Treaty, with authority, if occasion arose, to act in place of Everett in making the exchange (D.S., 15 Instructions, Great Britain, 58-59; 3 Credences, 26).

In his letters of July 15 to the commissioners of Maine and Massachusetts, enclosing a statement of the proposed line of the northeastern boundary in almost the exact language of Article 1 of the treaty, Webster wrote as follows (published correspondence, 81-83; a draft in Webster's handwriting is in F.S., Northeastern Boundary, envelope 18):

You have had an opportunity of reading Lord Ashburton's note to me of the 11th of July. Since that date I have had full and frequent conferences with him respecting the eastern boundary, and believe I understand what is practicable to be done on that subject, so far as he is concerned. In these conferences he has made no positive or binding proposition, thinking perhaps it would be more desirable, under present circumstances, that such proposition should proceed from the side of the United States. I have reason to believe, however, that he would agree to a line of boundary between the United States and the British provinces of Canada and New Brunswick, such as is described in a paper accompanying this (marked B), and identified by my signature [see published correspondence, 83-84; D.S., Northeastern Boundary, envelope 18, a draft copy with interlineations and corrections].

In establishing the line between the monument and the St. John, it is thought necessary to adhere to that run and marked by the surveyors of the two Governments in 1817 and 1818. There is no doubt that the line recently run by Major Graham is more entirely accurate; but, being an *ex parte* line, there would be objections to agreeing to it without examination, and thus, another survey would become necessary. Grants and settlements, also, have been made, in conformity with the former line, and its errors are so inconsiderable that it is not thought that their correction is a sufficient object to disturb these settlements. Similar considerations have had great weight in adjusting the line in other parts of it.

The territory in dispute between the two countries contains 12,027 square miles, equal to 7,697,280 acres.

By the line described in the accompanying paper, there will be assigned to the United States 7,015 square miles, equal to 4,489,600 acres; and to England 5,012 square miles, equal to 3,207,680 acres.

By the award of the King of the Netherlands, there was assigned to the United States 7,908 square miles, 5,061,120 acres; to England 4,119 square miles, 2,636,160 acres.

The territory proposed to be relinquished to England, south of the line of the King of the Netherlands, is, as you will see, the mountain range, from the upper part of the St. Francis river to the meeting of the two contested lines of boundary, at the Metjarmette Portage, in the highlands, near the source of the St. John's. This mountain tract contains 893 square miles, equal to 571,520 acres. It is supposed to be of no value for cultivation or settlement. On this point you will see, herewith, a letter from Captain Talcott, who has been occupied two summers in exploring the line of the highlands, and is intimately acquainted with the territory. The line leaves to the United States, between the base of the hills and the left bank of the St. John, and lying along upon the river, a territory of 657,280 acres, embracing, without doubt, all the valuable land south of the St. Francis and west of the St. John. Of the general division of the territory, it is believed it may be safely said that while the portion remaining with the United States is, in quantity, seven twelfths, in value it is at least four fifths of the whole. [For the letter of Captain Talcott, see published correspondence, 84.]

Nor is it supposed that the possession of the mountain region is of any importance, in connexion with the defence of the country or any military operations. It lies below all the accustomed practicable passages for troops into and out of Lower Canada; that is to say, the Chaudière, Lake Champlain, and the Richelieu, and the St. Lawrence. If an army, with its *material*, could possibly pass into

Canada over these mountains, it would only find itself on the banks of the St. Lawrence below Quebec; and, on the other hand, it is not conceivable that an invading enemy from Lower Canada would attempt a passage in this direction, leaving the Chaudière on one hand and the route by Madawaska on the other.

If this line should be agreed to, on the part of the United States, I suppose that the British minister would, as an equivalent, stipulate, first, for the use of the river St. John, for the conveyance of the timber growing on any of its branches, to tide water, free from all discriminating tolls, impositions, or inabilities of any kind, the timber enjoying all the privileges of British colonial timber. All opinions concur that this privilege of navigation must greatly enhance the value of the territory and the timber growing thereon, and prove exceedingly useful to the people of Maine. Second: That Rouse's Point, in Lake Champlain, and the lands heretofore supposed to be within the limits of New Hampshire, Vermont, and New York, but which a correct ascertainment of the 45th parallel of latitude shows to be in Canada, should be surrendered to the United States.

It is probable, also, that the disputed line of boundary in Lake Superior might be so adjusted as to leave a disputed island within the United States.

These cessions on the part of England would enure partly to the benefit of the States of New Hampshire, Vermont, and New York, but principally to the United States. The consideration on the part of England, for making them, would be the manner agreed upon for adjusting the eastern boundary. The price of the cession, therefore, whatever it might be, would in fairness belong to the two States interested in the manner of that adjustment.

Under the influence of these considerations, I am authorized to say, that if the commissioners of the two States assent to the line as described in the accompanying paper, the United States will undertake to pay to these States the sum of two hundred and fifty thousand dollars, to be divided between them in equal moieties; and, also, to undertake for the settlement and payment of the expenses incurred by those States for the maintenance of the civil posse, and also for a survey which it was found necessary to make.

The line suggested, with the compensations and equivalents which have been stated, is now submitted for your consideration. That it is all which might have been hoped for, looking to the strength of the American claim, can hardly be said. But, as the settlement of a controversy of such duration is a matter of high importance, as equivalents of undoubted value are offered, as longer postponement and delay would lead to further inconvenience, and to the incurring of further expenses, and as no better occasion, or perhaps any other occasion, for settling the boundary by agreement, and on the principle of equivalents, is ever likely to present itself, the Government of the United States hopes that the commissioners of the two States will find it to be consistent with their duty to assent to the line proposed, and to the terms and conditions attending the proposition.

The President has felt the deepest anxiety for an amicable settlement of the question, in a manner honorable to the country, and such as should preserve the rights and interests of the States concerned. From the moment of the announcement of Lord Ashburton's mission, he has sedulously endeavored to pursue a course the most respectful towards the States, and the most useful to their interests, as well as the most becoming to the character and dignity of the Government. He will be happy if the result shall be such as shall satisfy Maine and Massachusetts, as well as the rest of the country. With these sentiments on the part of the President, and with the conviction that no more advantageous arrangement can be made, the subject is now referred to the grave deliberation of the commissioners.

Both Maine and Massachusetts gave their formal assent to the proposal, subject to certain conditions. The assent of the commissioners of Massachusetts is dated July 20, 1842 (D.S., Northeastern Boundary, envelope 18; published correspondence, 92-93), and concludes as follows:

Whether the national Boundary, suggested by you, be suitable or unsuitable; whether the compensations that Great Britain offers to the United States for the territory conceded to her, be adequate or inadequate; and whether the Treaty,

full, and a particular account rendered; or a gross sum to be agreed upon by the Commissioners of Maine and Massachusetts shall be paid by Great Britain, as a settlement of that fund; and that all claims, bonds and securities taken for timber cut upon the territory be transferred to the Authorities of Maine and Massachusetts:

2<sup>d</sup> That all grants of land, within that portion of the disputed territory conceded to Great Britain, made by Maine and Massachusetts, or either of them, shall be confirmed; and all equitable possessory titles shall be quieted to those who possess the claims; and we assent to a reciprocal provision for the benefit of settlers falling within the limits of Maine. And we trust that the voluntary suggestion of the British Minister, in regard to John Baker and any others, if there be any similarly situated, will be carried into effect, so as to secure their rights:

3<sup>d</sup> That the right of free navigation of the St John, as set forth in the proposition of Mr Webster on the part of the United States, shall extend to, and include, the products of the soil, in the same manner as the products of the forest; and that no toll, tax or duty be levied upon timber coming from the territory of Maine.

The conditions of Maine were also embodied in the treaty text; Article 5 deals with the "Disputed Territory Fund"; by Article 4 grants of land in the disputed territory are confirmed; and the clauses of Article 3 are broad enough to cover the provisions desired by the commissioners of Maine regarding the navigation of the St. John River. The "voluntary suggestion of the British Minister, in regard to John Baker", is referred to below.

A statement of the agreement reached on the northeastern boundary question (Articles 1 and 3-6 of the treaty) was part of the note of Webster of July 27, which set forth the entire boundary settlement (Articles 1-7), with a detailed description of the line "proposed to be agreed to" (Articles 1 and 2). The answering note of Ashburton of July 29 gave his assent; there remained only the drafting of certain of the articles, some of which had been already written (see published correspondence, 58-62).

In the presidential message to the Senate of August 11 the assent of the two States to the boundary clauses was prominently mentioned. That message, which deals with the whole negotiation and which was written by Daniel Webster (*The Writings and Speeches of Daniel Webster*, XII, 21), follows (published correspondence, 19-25):

I have the satisfaction to communicate to the Senate the results of the negotiations recently had in this city with the British minister special and extraordinary.

These results comprise—

1st. A treaty to settle and define the boundaries between the territories of the United States and the possessions of her Britannic Majesty in North America, for the suppression of the African slave-trade, and the surrender of criminals, fugitive from justice, in certain cases.

2d. A correspondence on the subject of the interference of the colonial authorities of the British West Indies with American merchant vessels driven by stress of weather, or carried by violence, into the ports of those colonies.

3d. A correspondence upon the subject of the attack and destruction of the steamboat *Caroline*.

4th. A correspondence on the subject of impressment.

If this treaty shall receive the approbation of the Senate, it will terminate a difference respecting boundary which has long subsisted between the two Governments—has been the subject of several ineffectual attempts at settlement, and has sometimes led to great irritation, not without danger of disturbing the

existing peace. Both the United States and the States more immediately concerned, have entertained no doubt of the validity of the American title to all the territory which has been in dispute; but that title was controverted, and the Government of the United States had agreed to make the dispute a subject of arbitration. One arbitration had been actually had, but had failed to settle the controversy; and it was found, at the commencement of last year, that a correspondence had been in progress between the two Governments for a joint commission, with an ultimate reference to an umpire or arbitrator, with authority to make a final decision. That correspondence, however, had been retarded by various occurrences, and had come to no definite result when the special mission of Lord Ashburton was announced. This movement on the part of England afforded, in the judgment of the Executive, a favorable opportunity for making an attempt to settle this long-existing controversy by some agreement or treaty, without further reference to arbitration. It seemed entirely proper that, if this purpose were entertained, consultation should be had with the authorities of the States of Maine and Massachusetts. Letters, therefore, of which copies are herewith communicated, were addressed to the Governors of those States, suggesting that commissioners should be appointed by each of them, respectively, to repair to this city and confer with the authorities of this Government, on a line by agreement or compromise, with its equivalents and compensations. This suggestion was met by both States in a spirit of candor and patriotism, and promptly complied with. Four commissioners on the part of Maine, and three on the part of Massachusetts, all persons of distinction and high character, were duly appointed and commissioned, and lost no time in presenting themselves at the seat of the Government of the United States. These commissioners have been in correspondence with this Government during the period of the discussions; have enjoyed its confidence and freest communications; have aided the general object with their counsel and advice; and, in the end, have unanimously signified their assent to the line proposed in the treaty.

Ordinarily, it would be no easy task to reconcile and bring together such a variety of interests in a matter in itself difficult and perplexed; but the efforts of the Government in attempting to accomplish this desirable object have been seconded and sustained by a spirit of accommodation and conciliation on the part of the States concerned, to which much of the success of these efforts is to be ascribed.

Connected with the settlement of the line of the northeastern boundary, so far as it respects the States of Maine and Massachusetts, is the continuation of that line along the highlands to the northwesternmost head of Connecticut river. Which of the sources of that stream is entitled to this character, has been matter of controversy, and is of some interest to the State of New Hampshire. The King of the Netherlands decided the main branch to be the northwesternmost head of the Connecticut. This did not satisfy the claim of New Hampshire. The line agreed to in the present treaty follows the highlands to the head of Hall's stream, and thence down that river, embracing the whole claim of New Hampshire, and establishing her title to 100,000 acres of territory more than she would have had by the decision of the King of the Netherlands.

By the treaty of 1783, the line is to proceed down the Connecticut river to the 45th degree of north latitude and thence west, by that parallel, till it strikes the St. Lawrence. Recent examinations having ascertained that the line heretofore received as the true line of latitude between those points was erroneous, and that the correction of this error would not only leave, on the British side, a considerable tract of territory heretofore supposed to belong to the States of Vermont and New York, but also Rouse's point, the site of a military work of the United States; it has been regarded as an object of importance, not only to establish the rights and jurisdiction of those States up to the line to which they have been considered to extend, but also to comprehend Rouse's point within the territory of the United States. The relinquishment by the British Government of all the territory south of the line heretofore considered to be the true line, has been obtained; and the consideration for this relinquishment is to enure, by the provisions of the treaty, to the States of Maine and Massachusetts.

The line of boundary, then, from the source of the St. Croix to the St. Lawrence, so far as Maine and Massachusetts are concerned, is fixed by their own consent, and for considerations satisfactory to them; the chief of these considerations being the privilege of transporting the lumber and agricultural products grown and raised in Maine on the waters of the St. John's and its tributaries down that river to the ocean, free from imposition or disability. The importance of this privilege, perpetual in its terms, to a country covered at present by pine forests of great value, and much of it capable hereafter of agricultural improvement, is not a matter upon which the opinion of intelligent men is likely to be divided.

So far as New Hampshire is concerned, the treaty secures all that she requires; and New York and Vermont are quieted to the extent of their claim and occupation. The difference which would be made in the northern boundary of these two States, by correcting the parallel of latitude, may be seen on Tanner's maps (1836), new atlas, maps Nos. 6 and 9. [A copy of that atlas is in the Division of Maps, Library of Congress; it is entitled "New Universal Atlas Containing Maps of the various Empires, Kingdoms, States and Republics of the World With a special map of each of the United States, Plans of Cities &c. Comprehended in seventy sheets and forming a series of One Hundred and Seventeen Maps Plans and Sections", by H. S. Tanner, Philadelphia, 1836.]

From the intersection of the 45° of north latitude with the St. Lawrence, and along that river and the lakes to the water communication between Lake Huron and Lake Superior, the line was definitively agreed on by the commissioners of the two Governments, under the 6th article of the treaty of Ghent. But between this last-mentioned point and the Lake of the Wood(s), the commissioners acting under the 7th article of that treaty found several matters of disagreement, and therefore made no joint report to their respective Governments. The first of these was Sugar island, or St. George's island, lying in St. Mary's river, or the water communication between Lakes Huron and Superior. By the present treaty this island is embraced in the territories of the United States. Both from soil and position, it is regarded as of much value.

Another matter of difference was the manner of extending the line from the point at which the commissioners arrived, north of Isle Royale, in Lake Superior, to the Lake of the Woods. The British commissioner insisted on proceeding to Fond du Lac, at the southwest angle of the lake, and thence, by the river St. Louis, to the Rainy Lake. The American commissioner supposed the true course to be, to proceed by way of the Dog river. Attempts were made to compromise this difference, but without success. The details of these proceedings are found at length in the printed, separate reports of the commissioners (cited below).

From the imperfect knowledge of this remote country, at the date of the treaty of peace, some of the descriptions in that treaty do not harmonize with its natural features, as now ascertained. "Long Lake" is nowhere to be found under that name. There is reason for supposing, however, that the sheet of water intended by that name, is the estuary, at the mouth of Pigeon river. The present treaty, therefore, adopts that estuary and river, and afterward pursues the usual route, across the height of land by the various portages and small lakes, till the line reaches Rainy Lake; from which the commissioners agreed on the extension of it to its termination, in the northwest angle of the Lake of the Woods. The region of country on and near the shore of the lake, between Pigeon river on the north, and Fond du Lac and the river St. Louis on the south and west, considered valuable as a mineral region, is thus included within the United States. It embraces a territory of four millions of acres, northward of the claim set up by the British commissioner under the treaty of Ghent. From the height of land at the head of Pigeon river, westerly to the Rainy Lake, the country is understood to be of little value, being described by surveyors, and marked on the map, as a region of rock and water.

From the northwest angle of the Lake of the Woods, which is found to be in latitude 45°23'55" north, existing treaties require the line to be run due south to its intersection with the 45th parallel, and thence along that parallel, to the Rocky mountains. [As in Article 2 of the treaty, the latitude is 49°23'55" north, and the line runs south to the 49th parallel; but the erroneous figures are in all

the official prints of the message: the Senate document here cited; Executive Journal, VI, 121; Richardson, IV, 166; and House Document No. 2, 27th Congress, 3d session, serial 418, p. 20.]

After sundry informal communications with the British minister upon the subject of the claims of the two countries to territory west of the Rocky mountains, so little probability was found to exist of coming to any agreement on that subject at present, that it was not thought expedient to make it one of the subjects of formal negotiation, to be entered upon between this Government and the British minister, as part of his duties under his special mission.

By the treaty of 1783, the line of division along the rivers and lakes, from the place where the 45th parallel of north latitude strikes the St. Lawrence, to the outlet of Lake Superior, is invariably to be drawn through the middle of such waters, and not through the middle of their main channels. Such a line, if extended according to the literal terms of the treaty, would, it is obvious, occasionally intersect islands. The manner in which the commissioners of the two Governments dealt with this difficult subject, may be seen in their reports. But where the line, thus following the middle of the river, or water course, did not meet with islands, yet it was liable sometimes to leave the only practicable navigable channel altogether on one side. The treaty made no provision for the common use of the waters by the citizens and subjects of both countries.

It has happened, therefore, in a few instances, that the use of the river, in particular places, would be greatly diminished, to one party or the other, if, in fact, there was not a choice in the use of channels and passages. Thus, at the Long Sault, in the St. Lawrence, a dangerous passage, practicable only for boats, the only safe run is between the Long Sault islands and Barnhart's island, all which belong to the United States on one side, and the American shore on the other. On the other hand, by far the best passage for vessels of any depth of water, from Lake Erie into the Detroit river, is between Bois Blanc, a British island, and the Canadian shore. So again there are several channels or passages, of different degrees of facility and usefulness, between the several islands in the river St. Clair, at or near its entry into the lake of that name. In these three cases, the treaty provides that all the several passages and channels shall be free and open to the use of the citizens and subjects of both parties.

The treaty obligations subsisting between the two countries for the suppression of the African slave-trade, and the complaints made to this Government within the last three or four years, many of them but too well founded, of the visitation, seizure, and detention of American vessels on that coast, by British cruisers, could not but form a delicate and highly important part of the negotiations which have now been held.

The early and prominent part which the Government of the United States has taken for the abolition of this unlawful and inhuman traffic, is well known. By the tenth article of the treaty of Ghent, it is declared that the traffic in slaves is irreconcilable with the principles of humanity and justice, and that both his Majesty and the United States are desirous of continuing their efforts to promote its entire abolition; and it is thereby agreed that both the contracting parties shall use their best endeavors to accomplish so desirable an object. The Government of the United States has, by law, declared the African slave-trade piracy; and at its suggestion other nations have made similar enactments. It has not been wanting in honest and zealous efforts, made in conformity with the wishes of the whole country, to accomplish the entire abolition of the traffic in slaves upon the African coast; but these efforts and those of other countries directed to the same end have proved, to a considerable degree, unsuccessful. Treaties are known to have been entered into some years ago between England and France, by which the former power, which usually maintains a large naval force on the African station, was authorized to seize, and bring in for adjudication, vessels found engaged in the slave-trade under the French flag. [Citations of certain acts mentioned in this and the following paragraph are in the notes below, under the heading "Article 8".]

It is known that, in December last, a treaty was signed in London by the representatives of England, France, Russia, Prussia, and Austria, having for its professed object, a strong and united effort of the five powers to put an end to the traffic. This treaty was not officially communicated to the Government of

the United States, but its provisions and stipulations are supposed to be accurately known to the public. It is understood to be not yet ratified on the part of France.

No application or request has been made to this Government to become party to this treaty; but the course it might take in regard to it, has excited no small degree of attention and discussion in Europe, as the principle upon which it is founded, and the stipulations which it contains, have caused warm animadversions and great political excitement.

In my message at the commencement of the present session of Congress. I endeavored to state the principles which this Government supports respecting the right of search and the immunity of flags. Desirous of maintaining those principles fully, at the same time that existing obligations should be fulfilled, I have thought it most consistent with the honor and dignity of the country, that it should execute its own laws, and perform its own obligations, by its own means and its own power. The examination or visitation of the merchant vessels of one nation, by the cruisers of another, for any purpose, except those known and acknowledged by the law of nations, under whatever restraints or regulations it may take place, may lead to dangerous results. It is far better, by other means, to supersede any supposed necessity, or any motive, for such examination or visit. Interference with a merchant vessel by an armed cruiser, is always a delicate proceeding, apt to touch the point of national honor, as well as to affect the interests of individuals. It has been thought, therefore, expedient, not only in accordance with the stipulations of the Treaty of Ghent, but at the same time as removing all pretext on the part of others for violating the immunities of the American flag upon the seas, as they exist and are defined by the law of nations, to enter into the articles now submitted to the Senate.

The treaty which I now submit to you, proposes no alteration, mitigation, or modification of the rules of the law of nations. It provides simply that each of the two Governments shall maintain on the coast of Africa a sufficient squadron to enforce, separately and respectively, the laws, rights, and obligations of the two countries, for the suppression of the slave-trade.

Another consideration of great importance has recommended this mode of fulfilling the duties and obligations of the country. Our commerce along the western coast of Africa is extensive, and supposed to be increasing. There is reason to think that, in many cases, those engaged in it have met with interruptions and annoyances, caused by the jealousy and instigation of rivals engaged in the same trade. Many complaints on this subject have reached the Government. A respectable naval force on the coast is the natural resort and security against further occurrences of this kind.

The surrender to justice of persons who, having committed high crimes seek an asylum in the territories of a neighboring nation, would seem to be an act due to the cause of general justice, and properly belonging to the present state of civilization and intercourse. The British provinces of North America are separated from the States of the Union by a line of several thousand miles; and, along portions of this line, the amount of population on either side is quite considerable, while the passage of the boundary is always easy.

Offenders against the law, on the one side, transfer themselves to the other. Sometimes, with great difficulty, they are brought to justice, but very often they wholly escape. A consciousness of immunity, from the power of avoiding justice in this way, instigates the unprincipled and reckless to the commission of offences; and the peace and good neighborhood of the border are consequently often disturbed.

In the case of offenders fleeing from Canada into the United States, the Governors of States are often applied to for their surrender; and questions of a very embarrassing nature arise from these applications. It has been thought highly important, therefore, to provide for the whole case by a proper treaty stipulation. The article on the subject in the proposed treaty is carefully confined to such offences as all mankind agree to regard as heinous, and destructive of the security of life and property. In this careful and specific enumeration of crimes, the object has been to exclude all political offences, or criminal charges, arising from wars or intestine commotions. Treason, misprision of treason, libels, desertion from military service, and other offences of similar character, are excluded.

And, lest some unforeseen inconvenience or unexpected abuse should arise from the stipulation, rendering its continuance, in the opinion of one or both of the parties, not longer desirable, it is left in the power of either to put an end to it at will.

The destruction of the steambot *Caroline* at Schloseer, four or five years ago, occasioned no small degree of excitement at the time, and became the subject of correspondence between the two Governments. That correspondence having been suspended for a considerable period, was renewed in the spring of the last year, but, no satisfactory result having been arrived at, it was thought proper, though the occurrence had ceased to be fresh and recent, not to omit attention to it on the present occasion. It has only been so far discussed, in the correspondence now submitted, as it was accomplished by a violation of the territory of the United States. The letter of the British minister, while he attempts to justify that violation upon the ground of a pressing and overruling necessity, admitting, nevertheless, that, even if justifiable, an apology was due for it, and accompanying this acknowledgment with assurances of the sacred regard of his Government for the inviolability of national territory, has seemed to me sufficient to warrant forbearance from any further remonstrance against what took place, as an aggression on the soil and territory of the country.

On the subject of the interference of the British authorities in the West Indies, a confident hope is entertained, that the correspondence which has taken place, showing the grounds taken by this Government, and the engagements entered by the British minister, will be found such as to satisfy the just expectation of the people of the United States.

The impressment of seamen from merchant vessels of this country by British cruisers, although not practised in time of peace, and, therefore, not at present a productive cause of difference and irritation, has, nevertheless, hitherto been so prominent a topic of controversy, and is so likely to bring on renewed contentions at the first breaking out of an European war, that it has been thought the part of wisdom now to take it into serious and earnest consideration. The letter from the Secretary of State to the British minister explains the ground which the Government has assumed, and the principles which it means to uphold. For the defence of these grounds, and the maintenance of these principles, the most perfect reliance is placed on the intelligence of the American people, and on their firmness and patriotism, in whatever touches the honor of the country, or its great and essential interests.

The negotiations on subjects other than the northeastern boundary question are to some extent discussed elsewhere in these notes.

Ashburton's report of the northeastern boundary settlement is contained in two of his despatches; that of July 28, 1842, is the first; it has references of interest to the position of the "Delegates from the North" (Ashburton Papers, despatch No. 15):

It is with much satisfaction that I have now the honor of informing your Lordship that I have at last settled the terms of the Convention of Boundaries from the River St Croix to the Lake of the Woods. The Convention itself will be ready in a day or two, and I hope to be able to send a Copy home by the Great Western Steamer in the course of next week. In the mean-time the substance will be found in a letter received this morning by me from Mr Webster, of which Copy is inclosed [Webster to Ashburton, July 27, 1842, published correspondence, 58-61].

After last addressing your Lordship on this subject by my Despatch of the 13<sup>th</sup> inst<sup>l</sup>, N<sup>o</sup> 13., the negotiations continued formally with the Secretary of State, but informally with the Delegates from the North who were more immediately concerned. You will have seen that I had already given up the Madawaska settlement on the South of the St John's, but that I had hoped to retain the upper part of that River as a boundary. At this point I made my stand for some time, but finding the Maine commissioners obstinate, supported by all their deputation in Congress, and, as I believe, really ready to return home re infected, I yielded to the mediation of a third party and consented to an intermediate line between the Highlands, as claimed by America, and the River. This was still resisted for some time; but on the 22<sup>d</sup> inst<sup>l</sup> the Commissioners from Maine and Massachu-

setts signified their consent in their notes to the Secretary of State forwarded by him to me, of which your Lordship will find copies inclosed [*ibid.*, 92-99]. Two of the four Commissioners from Maine are returned home little satisfied with what has been done, and complaining of having been forced by their associates, and I am bound to add that the public of this place generally consider the terms severe, in as far as they are, imperfectly, known to them. The prevailing idea is, that the Netherlands Boundary was the utmost possible pretention on our part; and they listen unwillingly to the explanation that we yield otherwise a large equivalent for the additional strip given to us, to give a better width to our line on the St Lawrence. I trust however that when the whole case with the correspondence comes before the Senate, the convention will be approved and ratified. I hear, as is common in such cases, of some murmurs and threats, but I can not say I am seriously apprehensive of the result. Much will however depend upon the Senate being satisfied on other subjects.

I must ask your Lordship's permission to defer until I send a correct Copy of the Treaty my observations more in detail on its provisions, being at this time very much occupied with this and other parts of my duties, and being anxious that no time should be lost in bringing what may be done before the Senate whose session cannot be much further prolonged.

In the mean-time the inclosed map marked with red ink will give some idea of the line agreed, as also of the proportionate division of the country between the Highlands and the upper St John. It will be seen that it removes the boundary completely from the Crest of the Hills over-looking the St Lawrence to their feet towards the River St John, and that in no part it will run nearer than 50 miles from Quebec. I have been obliged to give rather an unsatisfactory description of the line from want of more perfect surveys, but this I shall have hereafter to explain.

It will be seen in the notification of Maine and Massachusetts that they make the addition of the words "produce of the soil" to those of "produce of the forest" in the article for the navigation of the St John, a condition of their assent. I did not think it prudent to object to this, although I made this alteration unwillingly. The persons here connected with New Brunswick attach no importance to it, the articles are few which can be so admitted, and they are now actually admitted duty free, so that the inhabitants of Maine will only obtain by the stipulation of Treaty, what they now enjoy by sufferance. I added to the word produce the word "unmanufactured" which would exclude flour, although no flour can come from Maine which gets supplied from the Middle States, and I stipulate for a right to call for proof of origin, if it should be necessary.

I congratulate your Lordship upon the favorable prospect of at last terminating this tedious controversy on terms which will, I trust, be approved by Her Majesty's Government. In the course of another fortnight I hope to be able to turn my steps towards home. I am rather in doubt at present whether I shall remain here during the discussion of this business in the Senate but I shall be guided in this respect entirely by what may on consideration appear most conducive to the public service.

The "inclosed map marked with red ink", which is mentioned in the foregoing despatch, was a reduced copy, but with minor modifications resulting principally in simplification, of a map, marked "Map A", which was prepared by, and which accompanied the report of, Lieutenant Colonel Richard Zachariah Mudge, of the Royal Engineers, and George William Featherstonhaugh, the British Commissioners appointed on July 9, 1839, to examine and survey the territory in dispute; it is entitled "Map of that portion of Her Majesty's Colonies of New Brunswick and Lower Canada the Title to Which is Disputed by the Government of the U. States with Parts of the Adjacent Country The Rise and Course of the Rivers, with the direction of the Highlands, and their elevation above the Sea, . . . to accompany a report of the investigation of that Country which

the R<sup>t</sup> Hon<sup>ble</sup> Viscount Palmerston G.C.B. Her Majesty's Principal Secretary of State directed to be made A.D. 1839". The facsimile in the Ashburton Papers shows the line of the boundary only from Lake Pohenegamook (not named) to the Metjarmette portage; another line, to the west, marks the "highlands" for the corresponding distance; the line of the boundary was drawn apparently on the theory that the "seven miles" clause of Article 1 would come into play, for the shortest distance between the "point on the northwest branch of the river St John" and the line of the "highlands", as shown on that facsimile, is from 13 to 15 miles, and between that "point" and the St. John River, 7 miles or less. The facsimile is on a scale, not indicated, of about 30 miles to an inch (1:1,900,800); and the Commissioners' map, marked "Map A", is on a scale, shown graphically, of about 15 miles to an inch (1:950,400). In their printed report, dated April 16, 1840, the Commissioners describe the preparation of their map (see Blue Book, 1840, North American Boundary, pt. 2, "Correspondence Relating to the Boundary between the British Possessions in North America and the United States of America, under the Treaty of 1783"; a copy thereof is in D.S., Northeastern Boundary, envelope 19½).

The other despatch of Ashburton to be quoted in this connection is one of August 9, 1842 (Ashburton Papers, despatch No. 17), which transmitted the treaty (in its earlier form; but as the article numbers mentioned are the same, the fact is not here material). Except for its opening paragraph, previously quoted, and for two others relating respectively to the boundary "further west" and to the clauses of Article 7, which are quoted below, that despatch is here set forth:

My correspondence since I have been here will have made your Lordship acquainted with the difficulties which have in succession attended these negotiations, arising mainly from the variety of persons and interests which it was necessary to consult and consider. I shall feel well rewarded for my trouble and anxiety should the final result be honored by Her Majesty's approbation. I believe the terms as well calculated as circumstances would permit for securing the interests of the Colonies; but above all I am persuaded of the importance of arriving, on terms not inconsistent with those interests, and with the honor of the country, at some settlement of these border dissensions, which it is very evident could not have been suffered long to continue without endangering the maintenance of peace, and rendering at all times the presence of a considerable military force necessary on the frontier. There are parts of this Treaty which it becomes my duty to accompany with some explanations, and I proceed to submit them to your Lordship in the order in which they present themselves.

Starting from the monument at the Source of the St Croix, the North line to its intersection with the St John's is declared, "to follow the exploring line run "and marked by the Surveyors of the two Governments in the years 1817 and 1818 "under the fifth Article of the Treaty of Ghent". It had been long known in the Province as well as in Maine that this North line had been incorrectly run, and last year Major Graham a distinguished officer of Engineers of the United States, marked a new line, which was generally believed to be correct. This would, by becoming gradually wider as it departed from the monument, have taken from New Brunswick about half a mile at the St John's near the falls, and as the strip of land is there narrow, the difference was important. All the grants and occupations of land had been formed on the basis of the old imperfect line, and for the same reason that we give up a more considerable strip on the 45<sup>th</sup> parallel of Latitude, I pressed the justice and convenience of this arrangement, and it was conceded.

Proceeding up the St John's from the intersection of the North Line, the river forms the boundary and it divides the Madawaska settlements. Here there are a number of small Islands in the river, which the Commissioners will have to distribute. They will have to be guided by what is deemed to be the "main channel" but there will be nevertheless occasional questions of doubt. We have promised that our Commissioners shall deal with these questions equitably, and with the least possible contention; consulting where it can be done, the interests of the inhabitants with whose farms the islands, which are not generally large, may be connected [cf. British and Foreign State Papers, XXXIII, 769].

Following the river upwards, there lives at its fork with the St Francis, a man named Baker, who has a mill, and about 100 acres of land. He has been an active partisan and agitator on the part of Maine, and the Maine Commissioners fearing that his situation as a British subject might expose him to difficulties, made many efforts to throw his property within the Maine line. As this was in every respect objectionable, and seeing the object they were aiming at, I got over the difficulty by a voluntary promise, not put into the Treaty, that, if Baker wishes to leave the Province, and is not able to find at once a purchaser for his property, it shall be taken over at a reasonable price. I have written to this effect a letter to Governor Kent one of the Maine Commissioners. This engagement must if necessary be fulfilled, and that rather liberally, but not extravagantly. I do not know what the expence of so doing may amount to, but I think it cannot well exceed a thousand pounds. Care has been taken to give security to the settlers generally whose titles arising from possession are not always strictly legal, and it is believed that the provision for this purpose will be found effectual.

The Boundary further proceeds up the St Francis to the outlet of the Lake Pohenagamook, and from thence in a straight line to a given point on the North-west branch of the River St John. This was the most difficult and is the least clearly defined part of these Boundaries. When in the course of negotiation Maine would not yield, as I had at one time hoped, the line of the Upper St John, and I refused to take that of the Crest of the Highlands, a middle line was after much discussion consented to, which would about divide the territory then in dispute, and bring our boundary every-where off the Hills which might overlook the Valley of the St Lawrence into the Valley of the St Johns. There were no maps to enable us to define with the desired accuracy this line, and there was no time for even the roughest survey: we therefore took the map which seemed most accurate, and which could not have been made with any purpose to mislead, and we described the point as intended, on the presumption that the map was accurate. A copy of this map will accompany the treaty. To guard myself however against the possibility that this point on the north-west branch of the St John's might run too far into the Highlands, the reservation was made, that it should recede to within seven miles thereof, should that be the case. It is my belief that the result of the survey, and final determination of this line will be satisfactory, but I must admit that this part of our work has not been as perfectly and accurately executed, as it would have been, if we could have had proper maps. I trust however that every precaution has been taken which the circumstances of the case admitted, considering always that it was highly desirable, that no further delay for the purpose of obtaining more correct information should be interposed.

The remainder of the line to St Regis requires no explanation. It was agreed that the hilly ground at the Head of Connecticut River, should be conceded to New Hampshire, and the strip of land by the 45<sup>th</sup> degree of Latitude, to New York and Vermont, and I had the satisfaction of learning that these concessions, while they were acceptable to the several States concerned, are considered as doing no injury whatever to Canada.

That Article of the Treaty which concedes to those parts of the State of Maine watered by the St John's and its tributaries, the free conveyance of their produce by that River, was the subject of many repeated discussions with the Deputies from Maine. The only part to which I had any objection was, the adding the words "agricultural produce" to the produce of the forest, but seeing that the Deputies, on signifying their consent to the Boundary, on leaving Washington made this a part of their consent, I did not think it expedient further to resist. Although I

objected for some time to have this condition forced upon me, I do not consider it to be of much importance, and I am confirmed in this opinion by that of the best-informed persons of the Province. The unmanufactured produce of Agriculture is in fact now admitted free of duty, and consists mainly in potatoes and onions, and the merchants of St John's consider with reason that the prosperity of their port and shipping depends mainly in making it the general mart of the great river on which it is situated.

The Article 5 which engages for the distribution of the fund called, the Disputed Territory Fund, confirms only what would be fairly due, if no notice were taken of this subject in the Treaty. This fund arises from monies received for Lumber cut on the Disputed Territory, and which was always promised to be held and ultimately distributed according to the stipulations of this article. When the account is made up as directed, the portion fairly belonging to Maine will be to be paid, deducting the charges applicable thereto. I would recommend that this be done rather liberally. Real charges of collection or recovery must be made, but I have promised that there shall be no general charge of Salaries to the Warden or others. I have no correct information of the probable amount of this fund but it can not exceed from five to ten thousand pounds.

I have only further to observe that this Treaty of boundaries will only require one Commissioner on each side with such assistants as each may think necessary. The marking the old line and the distribution of the Islands in the St John will be attended with little difficulty, but the running the straight line from the Lake Pohenagamook through the wilderness will take more time. This can not now be done until next summer, and I would recommend our Commissioner being instructed to do this work so as to avoid, if possible, contention, and I am assured that the American officer shall have the same conciliatory instructions.

I shall communicate to the Governor General of Her Majesty's North American Provinces, a copy of this Treaty, recommending that the communication may be considered as confidential, until he is informed from home of its ratification.

The negotiations for this Treaty of Boundaries were connected with a settlement of claims and accounts between the General Government and the States of Maine and Massachusetts. With these we had nothing to do, and I much objected to let any notice be taken of them in the Treaty, but there were great difficulties arising from leaving them out and not giving to this settlement the sanction of the Treaty. The subject is accordingly introduced in the 5<sup>th</sup> Article, but I thought it expedient to exchange notes [of August 9, 1842, printed above immediately following the treaty text] with the Secretary of State, copies of which accompany this Despatch to explain that Great Britain is without interest or responsibility in the subject of that Article.

Three engagements of the British Government, collateral to the treaty, are mentioned in the foregoing despatch. Two of them, it seems, were promises made verbally by Ashburton: first, that with questions of doubt regarding small islands in the St. John River the British Commissioner under Article 6 would "deal . . . equitably, and with the least possible contention; consulting where it can be done, the interests of the inhabitants with whose farms the islands . . . may be connected"; and, secondly, that in the settlement of the Disputed Territory Fund, pursuant to Article 5, "there shall be no general charge of Salaries to the Warden or others."

The other collateral engagement related to the real property of an American citizen, John Baker, which was located on the New Brunswick side of the St. John; "the voluntary suggestion of the British Minister, in regard to John Baker", was mentioned in the conditions with the assent of the Maine commissioners to the boundary clauses (July 22, 1842, quoted above); the engagement entered into was evidenced by a letter from Ashburton to Edward Kent, one of the Maine commissioners and previously (1838 and 1841) Governor of

Maine. This is spoken of by Ashburton as "a voluntary promise, not put into the Treaty", and was to the effect "that, if [John] Baker wishes to leave the Province [of New Brunswick], and is not able to find at once a purchaser for his property, it shall be taken over at a reasonable price." It seems that no copy of that letter from Ashburton to Kent was sent by the former to London; and no record thereof has been found in the archives of the Department of State, in the Maine archives in the State Library at Augusta, in the collections of the Maine Historical Society at Portland, in the archives of the Province of New Brunswick, or in the papers of the New Brunswick Historical Society at St. John. It is to be added that no necessity for the fulfilment of the engagement regarding the property of John Baker arose, for Baker remained a resident of New Brunswick until his death in the year 1868 (see Thomas Albert, *Histoire du Madawaska*, 223-24, and *Resolves of Maine*, 1895, ch. 114).

The remarks regarding "this map" in the despatch last quoted are somewhat obscure; with the despatch in the Ashburton Papers is a copy of the Mudge and Featherstonhaugh map that is identical in its map base with the copy, in the same papers, of the map transmitted with Ashburton's despatch of July 28; it is marked to show the line of the treaty as well as the lines of the rival claims, and it bears in its lower margin an annotated legend; but the "point on the Northwest branch of the River St John" is about 17 miles farther upstream, and the line connecting it with Lake Pohenegamook and with the southwest branch runs much nearer the highlands, than as drawn on the copy with Ashburton's despatch No. 15, of July 28; the statement in the despatch of August 9 that "A copy of this map will accompany the treaty" presumably can refer only to the enclosure with the despatch; and it seems that by "the map which seemed most accurate" Ashburton meant the Mudge and Featherstonhaugh map.

#### THE MAPS KNOWN IN 1842<sup>1</sup>

There were two maps which, because of the lines drawn on them, had a great influence on the official representatives of Maine and were persuasive in inducing their assent to the conventional line of the northeastern boundary which is described in Article 1 of the Webster-Ashburton Treaty.

One of those two maps was the Steuben-Webster copy of Mitchell's Map, which is briefly described in the notes to Document 58 (vol. 3, pp. 338-40, 350-51) and a facsimile reproduction of which is in a pocket inside the back cover of volume 3.

Neither historically nor legally was the line on that Steuben-Webster Map any evidence whatever of the intent of the negotiators of the treaties of 1782 and 1783 or of the meaning of the boundary provisions there written; Baron Steuben had no part in those negotia-

<sup>1</sup> The paragraphs under this heading are in large part based upon the studies of Colonel Lawrence Martin, including in particular the draft of his unpublished book on Mitchell's Map, the manuscript of which the editor of these volumes has read (see vol. 3, p. 323, footnote 1).

# The Washington Times

FRIDAY, JANUARY 1, 1988

WASHINGTON, D.C.

## 5 frozen islands stir a dispute with the Soviets

By John McCaslin  
THE WASHINGTON TIMES

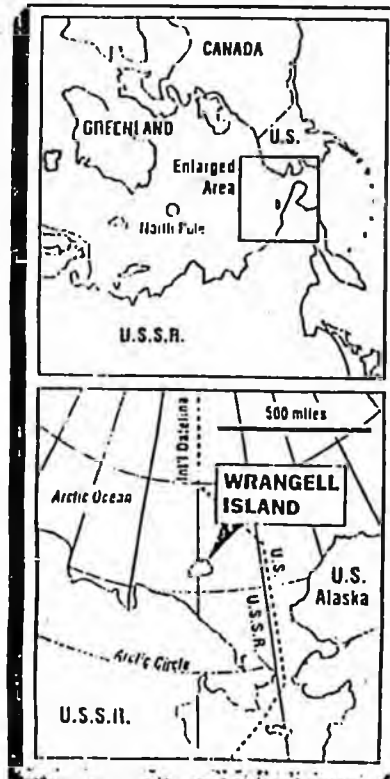
The State Department and a 40-year-old Agriculture Department bureaucrat are locked in a bitter dispute over whether the United States or the Soviet Union should control five frozen, wind-swept islands near a disputed section of the U.S.-Soviet border.

The Agriculture Department employee accuses the FBI of harassing him at the State Department's request.

Since 1981, a secret U.S. negotiating delegation has held eight meetings with Soviet counterparts to establish an exact boundary between Alaska and the Soviet Union, according to a State Department official who asked not to be named.

"Once a boundary line is agreed to by both nations, which could come early this year, it's a safe bet that the five-island chain will become official Soviet territory," the official said.

But Mark Seidenberg, an Agriculture Department employee, has refused to talk about it — point blank. And they've stonewalled the House Foreign Affairs Committee and the Senate Foreign Relations Committee."



Map by The Washington Times

## ALASKA

From page A1

ture Department employee, has spent more than a decade battling to reassert what he claims is U.S. sovereignty over Wrangell Island, a patch of frozen tundra in the Arctic Ocean that has been suggested to be the site of a Soviet concentration camp.

Also in dispute are four smaller islands off the same Soviet coastline — Herald, Bennett, Henrietta and Jeannette.

Carl Olson, chairman of State Department Watch, a group which has also fought for U.S. rights to the islands, said in a telephone interview from Los Angeles that he is "equally optimistic the United States will retain the islands."

"The important thing is to get the State Department on our side, but so far they have shown zero initiative," Mr. Olson said.

"We have not been able to get anything out of State," he said. "They

refuse to talk about it — point blank. And they've stonewalled the House Foreign Affairs Committee and the Senate Foreign Relations Committee."

A House bill introduced last Jan. 6 by Rep. William E. Dannemeyer, California Republican, would require that Congress approve any treaty for "transfer of territory or setting of a boundary line" between the United States and any foreign country. The bill has at least 30 co-sponsors.

On the Senate side, Sen. Jesse Helms, North Carolina Republican, has introduced similar legislation, complaining that surrendering the five islands would amount to handing over half of the entire outer continental shelf, which Mr. Olson said contains "vast oil-rich seabeds."

The State Department official said the United States "obviously hasn't sent any drilling ships to the area."

But he added: "The Department of Interior and other geologists haven't found any indication of any

[oil] up there."

"And as far as our maritime boundary agreement negotiations go, we are actively looking for natural resources — oil, fisheries, what have you — that might benefit us."

The official said that, contrary to complaints from both lawmakers and other individual parties, the State Department has and will continue to brief Congress and state officials in Alaska of its ongoing boundary negotiations with the Soviets.

The California state legislature passed a joint resolution in September that said the State Department should go a step further, and include Alaska in future U.S.-Soviet negotiations.

Mr. Seidenberg, charging harassment, said two FBI agents stopped by his Arlington apartment one night three weeks ago to ask why he was so obsessed for the past 14 years with seeing the island chain become U.S. territory.

"The FBI picked me up because the State Department asked them to," Mr. Seidenberg said in an inter-

view yesterday.

"The agents told me to keep silent, that anything I say can be used against me," he said. "It was an upsetting experience."

The agents, who carried no arrest warrant, asked Mr. Seidenberg to accompany them to their waiting car, where he was interrogated for an hour and a half.

"They wouldn't even let me call my attorney," he said. "They went so far as to tell the receptionist in my apartment building not to call my attorney when I asked her to. They told her, 'You don't want to do that,' and then proceeded to escort me out of my building."

Some officials conclude that Wrangell Island has been under Russian control since 1924, when the last 14 Americans occupying it — reindeer meat shippers — were captured and shipped to Siberia.

As far as U.S. officials know, little else other than snow has fallen on Wrangell since, although author Abraham Shifrin suggests in his book, "The Concentration Camps of the Soviet Union," that a Soviet

prison camp might be on the island.

The other four islands are believed uninhabited, and are ice-covered most of the time.

Perhaps this is why the State Department is so willing, as some critics have charged, to "give away" the five islands, which dot the ocean 300 to 400 miles off Alaska's northwest coast.

"Somehow the idea has crept out that we're going to give these islands away," said the State Department official.

"Wrangell Island was discovered in the 19th century, and there was some U.S. involvement in the discovery," the official said. "But lawyers from our government have searched out and tried to find what belonged to Alaska, but the U.S. never made a claim to the islands. The Russians, on the other hand, have claimed sovereignty to them."

Mr. Seidenberg, who is by no means alone in his endeavor to keep the island chain out of Soviet hands, is not so convinced.

His interest in Wrangell Island,

which began as a high school student in 1963, became greater when Ralph Loman, a U.S. businessman who claimed to have bought the island in the early 1920s, asked Mr. Seidenberg to continue working to get it returned to the proper owner. Mr. Loman made the request 14 years ago when he was on his death bed.

If the islands were not returned to him, the dying man at least wanted them returned to the United States, of which he was a citizen. Mr. Loman tried to sue the Russian government before his death over his rights to the land, but to no avail.

"I will not let this [or] the FBI's visit to my apartment stand in the way," said Mr. Seidenberg, who has pressured not only the State Department, but Moscow. "I will do everything I can to keep the islands in Alaska and in the United States."

In 1986, the Alaska Senate voted 16-4 on its own resolution that restated Alaska's sovereignty over the five islands, and the assembly is scheduled to take up the issue again when it convenes later this month.

# U.S. to resume talks with Soviets over 5 islands; Alaska unhappy

By John McCaslin  
THE WASHINGTON TIMES

Secret U.S.-Soviet negotiations to set an exact boundary between Alaska and the Soviet Union are set to resume this month, sources familiar with the talks say.

The meeting, which the State Department refuses to discuss, is the ninth such closed session since 1981 to resolve the boundary dispute, which includes questions about the ownership of five strategic islands.

The islands — dotting the Arctic Ocean from 300 to 900 miles off Alaska's northwest coast — are known as Wrangell, Herald, Henrietta, Jeanette and Bennett. Wrangell and Herald lie some 100 miles north of Siberia.

A State Department official, who asked not to be identified, said recently that "once a boundary line is agreed to by both nations ... it's a safe bet that the five-island chain will become official Soviet territory."

The official said the agreement could come as early as this year, depending on the outcome of the upcoming talks.

But Rep. William Dannemeyer, California Republican, is pushing legislation requiring Senate approval of any boundary decision reached by U.S. and Soviet negotiators.

"Borders between countries are set by treaty ... and must be consented to by two thirds of the Senate," Mr. Dannemeyer said in a letter

to fellow lawmakers.

"Under dispute here is not only the State Department's unauthorized conduct [of secretly] negotiating, but whether or not a legal boundary in the area exists at all. All the facts suggest not," he said.

Meanwhile, in a timely vote, Senate lawmakers in Alaska unanimously passed a resolution last week reiterating the state's rule over the islands — land once claimed by U.S. citizens and now controlled by the Soviet Union.

The resolution, passed by a vote of 18-0, asks for compensation and restitution to the citizens of Alaska from the U.S. government for the loss of the territory to the Soviet Union in 1924, due to "neglect."

"The continuing trespass by the Soviet government deprives the state of Alaska and its people of their fundamental rights to use the islands ... together with the surrounding continental shelf and its valuable resources," the resolution states.

The Alaska lawmakers sent a copy of their resolution to President Reagan, Secretary of State George Shultz and House Speaker Jim Wright.

Two companion resolutions "are sailing through the Senate and House in Juneau" charging that Alaska is being excluded from the boundary negotiations, which could ultimately decide the ownership of the islands, said Carl Olson, chairman of State Department

Watch, a group which has fought for U.S. rights to the islands.

"It looks like a collision course is near," said Mr. Olson, who has enlisted the support of such lawmakers as Sen. Jesse Helms, North Carolina Republican. Mr. Helms has introduced legislation complaining that a surrender of the islands would amount to handing the Soviets more than half of the entire continental shelf.

Mr. Olson said the shelf surrounding the Wrangell island chain contains "vast oil-rich seabeds," a claim supported by other researchers.

The islands contain "as much as 25 billion barrels of untapped oil reserves," said Mr. Dannemeyer.

The State Department official, while acknowledging that "there was some U.S. involvement in the discovery" of the islands, insists that "lawyers from our government have searched out and tried to find what belonged to Alaska, but the U.S. [government] never made a claim to the islands."

Wrangell, the largest of the islands, has been under Soviet control since 1924, when the last 14 Americans occupying it were captured by Russian forces and shipped to Siberia. Since then, the Soviets have operated a prison camp on the island, among other things.

Mr. Dannemeyer's resolution, which has 37 co-sponsors to date, says Wrangell Island was claimed for the United States in 1881.

## Administration's Detente Mentality

The threat of the State Department to give away five strategic Alaskan islands and vast oil-rich seabeds to the Soviet Union has generated growing opposition around the country (page one, Dec. 7). The proposed giveaway reflects the unfortunate "detente" mentality which grievously undermines the Reagan Doctrine.

The vehicle for abandoning the islands is the State Department's negotiations over a boundary line between the U.S. and the Soviet Union. Currently no treaty has even been adopted establishing such a boundary between Alaska and the Soviets, even though they are less than three miles apart in the Bering Straits.

The State Department is fighting to create a boundary line which puts the Alaskan Arctic islands of Wrangle, Herald, Bennett, Henrietta and Jeannette on the Soviet side. It has held eight super-secret rounds of negotiations with the Soviets so far on the exact location of the line, with the last round held in October. So sensitive is this potential giveaway that State has systematically excluded all representatives of the state government of Alaska from the negotiations, and has completely stonewalled the U.S. Congress.

Congressional members have rightly become upset and have introduced measures to bring this constitutional issue to a head. The principle of congressional approval being required for the transfer of territory to a foreign country and the setting of boundaries is at stake.

The Alaskan legislature has also been adamant. In 1986 it overwhelmingly passed a resolution sponsored by Rep. Roger Jenkins and signed by Gov. Bill Sheffield demanding that the State Department not give in to the Soviet demands in the boundary negotiations regarding the resource-rich Bering Sea. Also in 1986 the Alaska Senate passed on a 16-4 vote a resolution restating Alaska's sovereignty over the five islands. Currently pending is a resolu-

tion by Sen. Rich Uehling complaining bitterly that the State of Alaska has been totally excluded from the setting of its own boundaries.

In support of the State of Alaska, the state legislature of California passed a joint resolution in September urging that any boundary agreement be in the form of a treaty and that the State of Alaska be completely involved in the terms of the treaty.

Yet the giveaway of these five islands and immense outercontinental shelf, which would make the Panama Canal giveaway pale in comparison, remains shrouded in the recesses of Foggy Bottom.

CARL OLSON  
Chairman, State Department Watch  
Washington

WHEN THE HEAT IS ON,  
THE STATE DEPARTMENT  
SENDS OUT THE F.B.I.  
TO DO ITS DIRTY WORK

Just look at what the State Department's reaction was to the expose of its giveaway plan for the five strategic Alaskan islands to the Soviet Union. Why can't the State Department just come clean with the American public and disclose exactly what moves it has already made to seal the giveaway? Why is it able to hide behind the F.B.I.'s skirts?

## *Crusader for Island In Soviet Union Says The FBI Paid a Visit*

\* \* \*  
**Seidenberg Says Two Agents  
Freed Him After Seeing  
Journal Story About Him**

By ROBERT S. GREENBERGER

Staff Reporter of THE WALL STREET JOURNAL  
WASHINGTON—Mark Seidenberg, who has been badgering the U.S. for years to tell him about secret border negotiations with the Soviet Union, finally got some attention. Earlier this week, he says, he was briefly taken into custody by the Federal Bureau of Investigation.

Mr. Seidenberg's crusade—to get the U.S. to reclaim from the Soviets Wrangell Island, which is north of Siberia—was the subject of a front-page story in The Wall Street Journal Monday. Wednesday night, Mr. Seidenberg says, he was visited at his suburban apartment near Washington by two FBI agents, Robert Osgood and Keith Bolcar, who questioned him about a recent letter he had written to the State Department concerning the negotiations.

In the letter, the 40-year-old Agriculture Department bureaucrat said he had information about a meeting last month between State Department officials and Alaskan officials. He wrote that he would publicize the information, which he implied was on a tape, unless the State Department told him it was classified.

An FBI spokeswoman, Barbara Wallace, said the agency won't discuss the activities of its agents or whether an investigation is under way. However, Mr. Seidenberg's attorney, David Nolan, said he spoke to Mr. Osgood's supervisor, who confirmed that the two agents visited Mr. Seidenberg.

At his apartment, says Mr. Seidenberg, he wouldn't answer questions and refused to grant permission for a search because

the agents didn't have a warrant. According to Mr. Seidenberg, the agents then told him they were taking him into custody. They refused Mr. Seidenberg's request to call his attorney; indeed, he says they even refused to let him bring along a Treasury bond that he wanted to use to post bail.

Escorted to the lobby of his building, Mr. Seidenberg gave his attorney's name and telephone number to a receptionist, and asked her to call. But the FBI agents warned her not to. The receptionist, Jeanne Shauklas, confirmed the incident in an interview yesterday.

Standing outside the building near the agents' automobile, Mr. Seidenberg was again questioned, and again refused to respond. After about 10 minutes, Mr. Seidenberg asked if he could put his hands in his pockets because he was cold. Not until his pockets were searched, the agents said. Mr. Seidenberg says the cautious G-men asked if he had any hypodermic needles in his pockets, and when he said he didn't, each agent put one hand in each of Mr. Seidenberg's pockets.

Mr. Seidenberg says the agents made further efforts to question him while he sat in their car. Finally, after one agent had returned from making a telephone call, Mr. Seidenberg was asked why someone from suburban Virginia had such interest in Alaska. "You can read it all in The Wall Street Journal," he says he replied. The agents asked for a copy of the story and, about 90 minutes after they had first arrived, the two accompanied Mr. Seidenberg back to his apartment, obtained a copy of the article and left. Mr. Seidenberg says he asked them if they would be returning with a search warrant and they said they would not.

Mr. Seidenberg believes he is being harassed by the State Department because of his persistent questions about the U.S.-Soviet border talks. However, a U.S. official who didn't want to be named asserts it was Mr. Seidenberg's letter, raising the possibility that the briefing session may have been illegally taped, that prompted the investigation.

Mr. Seidenberg says this isn't the first

time the FBI has contacted him. About a year ago, he claims, the agency called and asked if he would cooperate with a surveillance operation of his neighbors, a Slavic couple the FBI suspected of being Soviet spies. Mr. Seidenberg, who considers himself a staunch anti-communist, agreed to help, but the couple soon moved. Mr. Seidenberg says the FBI official who contacted him at that time identified himself as special agent Tracy.

## Border Dispute

Question: What country was first to lose territory to Soviet aggression?

Answer: Not Finland, but the unfortunate Baltic States, but the United States of America.

That happened on Aug. 20, 1924 when the crew of the Soviet gunboat Krasny Oktober (Red October) landed on Wrangell Island off the northeast coast of Siberia and took as prisoners the 14 American fur trappers encamped there. Twelve survivors were eventually released. Two men died in captivity. The Soviets claimed Wrangell and now operate a political prison camp on the island.

On "Face the Nation" last month, National Security Adviser Robert McFarlane indicated that the Wrangell "boundary dispute" will be on the table at the Geneva summit. Some members of Congress believe the State Department wants to finally resolve the island's status in the Soviets' favor. Resolutions demanding that any agreement be subject to congressional approval have been drafted by Sen. Jesse Helms and Rep. Mark Siljander.

A U.S. irredentist claim to a chilly piece of Arctic real estate might sound like small potatoes. But the congressmen figure that it doesn't make much sense to complain to the Soviets about their expansionist tendencies—as President Reagan clearly intends to do—while at the same time politely forgetting that they once grabbed some land from the U.S. itself.

The U.S. claim to Wrangell and four small nearby islands dates from 1881. A U.S. Revenue Marine (Coast Guard) party that included John Muir, the famed naturalist and founder of the Sierra Club, visited the area that year. Mr. Muir later wrote that they "landed on Wrangell Land and took possession of it in the name of the United States." A czarist explorer, Lt. Ferdinand Wrangell, ad-

mitted in his memoirs that he never actually discovered the island that bears his name. Until the Krasny Oktober showed up, there was no official Russian presence.

Several U.S. oil companies are interested in searching for oil on the continental shelf between the U.S. and the Soviet Union. When last year the Interior Department announced it would begin leasing tracts in the Arctic Ocean, the State Department warned that anyone bidding on tracts to the west of the so-called 1867 Convention Line should be aware that the area might become Soviet territory.

As recently as 1975, the State Department maintained that the U.S. had never relinquished its claims to Wrangell and the other islands, and that the convention lines depicted on maps did not constitute an international boundary. But in December 1984, after some negotiations in Moscow, the department said it had not found any evidence that the Government of the United States has ever formally asserted a claim to any of the islands. That seems to contradict the John Muir account. It also ignores a 1959 ruling of the Foreign Claims Settlement Board that the property of the fur trappers was illegally expropriated. Russian maps made early in this century show the islands as American.

We've had our own doubts about irredentist claims. The further back in history you go, the greater amount of disputed acreage there is. But the Soviets themselves are among history's most aggressive irredentists. Aside from their grab of the Baltic States and their expansion of the old czarist empire westward to the Elbe and southward to Kandahar, they have border disputes with Norway, Sweden, Japan and China. Whatever the prospects for satisfaction, the U.S. should hang tough over Wrangell Island just to demonstrate its resistance to Soviet imperialism.

## SUMMIT MEETING IN GENEVA IN 1985 HAD THE GIVEAWAY OF ALASKAN ISLANDS TO THE SOVIET UNION ON THE AGENDA

If you want the Wall Street Journal to publish a hard-hitting editorial on the Alaska giveaway, as it did just before the Summit Meeting in 1985, please write ASAP to:

Mr. John Fund,  
Editorial Page Asst. Editor  
Wall Street Journal  
200 Liberty Street  
New York, NY 10281

THE WALL STREET JOURNAL

WEDNESDAY, NOVEMBER 13, 1985

## Time to Sober Up

Let's hope President Reagan's pre-summit TV address tonight will sober up the Washington community, which is suffering from a terminal case of silliness over its hopes about what Mr. Reagan's sitdown with Mikhail Gorbachev is likely to accomplish.

Contributing to the air of unreality are tales of White House gnomes delivering tons of briefing papers to the Oval Office and setting up projectors to show the president the Gorbachev-Mitterrand game films. Newspaper Style sections this Sunday will describe in infinite detail what Nancy will wear when she has tea in Geneva with the lovely Raisa. Tip O'Neill is taking time out from the budgetary chaos he presides over on Capitol Hill to make the outrageous claim that Congress has given the president the support he needs for a summit "success."

On a more serious level, George Shultz has been treating with the Soviets since his meeting with Andrei Gromyko last January, laying the summit groundwork. Without knowing the game plan, it's impossible to assess how well Mr. Shultz is doing. But we mostly have been hearing about gifts the State Department might like to lay before Mr. Gorbachev. Surrender of the U.S. claim to Wrangell Island (discussed in this space yesterday) is one possibility. An offer to pool fusion energy research with the Russians is another. And the U.S. is prepared to go on pretending SALT II is a real agreement, however much abuse it gets from the Russian side.

In short, the Washington community, by merely following its own instincts, is once again setting the president up to have his pockets picked. Mr. Reagan's Strategic Defense Initiative is being negotiated and renegotiated on Mr. Gorbachev's behalf. The president is being urged to rush back, as Richard Nixon once did, to dramatically present some "breakthrough" to a joint session of Congress. Word is going around, as it always does, that the Soviet leader is in deep trouble and will be eager to make deals.

Mr. Reagan has tried to discourage such nonsense. He has wisely rejected the idea of a post-summit communique, for example, saying that you don't promise a communique when all you are doing is having a little get-acquainted session. He has discouraged the notion that there will be any "agreements." But even for a president with Mr. Reagan's keen understanding of what the U.S.-Soviet relationship is and must be, there are dangers of being trapped. Arms control is, as always, the biggest area of danger.

The policy of abiding by SALT II, which Mr. Shultz seems prepared to continue, hasn't made much sense. Consider the just-published "Military Balance" report of London's well-respected International Institute for Strategic Studies. It says the Soviets have increased their supply of long-range nuclear warheads by 37% in just three years. They now enjoy a 2-1-to-one advantage over the U.S. in land and submarine based megatonnage. That's mutual restraint?

U.S. soft-liners want the president to promise that the U.S. will not over the next five years exercise its option to withdraw, on one year's notice, from the 1972 anti-ballistic missile treaty. That treaty also has not placed much restraint on the Soviets. The IISS says the Soviets are actively pursuing their own space-based nuclear defense research even while they attack the U.S. effort. A Pentagon report sent to the White House Tuesday cites a series of serious Soviet ABM treaty violations. So while Mr. Reagan temporizes and generously offers to make future U.S. defense technology available to all comers, the Russians are actually putting a defense in place. The danger in this is clearly outlined in the open letter to the president from Rep. Kemp and Sen. Wallop excerpted nearby.

People often ask why the Russians have invested so much in weapons of mass destruction while living standards in the Soviet Union are, on the whole, only slightly above Third World levels. The summit ballyhoo in the U.S. provides the obvious answer. They want to be feared. They surround themselves in mystery so that American congressmen, permitted an audience with the Great Gorbachev, will come away awed by having been spoken to in English or fixed with his steely gaze. Showmanship of this skill level wins concessions.

Richard Nixon, who has had some experience with summits, wrote in the latest Foreign Affairs some cautionary words: "This is a long struggle with no end in sight. Whatever their faults, the Soviets will be firm, patient and consistent in pursuing their foreign policy goals. We must match them in that respect."

A good way to match them will be for Mr. Reagan to go to the summit, complain as he intends about Soviet aggressions and abuses of human rights and make no promises. And tonight will not be too soon to start damping down the mindless euphoria that has overtaken pre-summit Washington.

## STATE DEPARTMENT BOWS TO SOVIET DEMANDS AND FORCES HUNDREDS OF PRO-AMERICAN AND ANTI-SOVIET PROTESTERS AWAY FROM THE STATE DEPARTMENT'S PUBLIC BUILDING IN WASHINGTON.

### A foreign mission

Reaction around town indicates this column was not taken overly seriously when we reported last week that during the visit of Soviet Foreign Minister Eduard Shevardnadze, the State Department designated its main building a foreign mission.

It's no joke. That astonishing move, reflecting what Sen. Jesse Helms and other conservative critics have been saying all along, enabled State to invoke a law to keep protesters 500 feet away from the building. At least for the duration of Mr. Shevardnadze's visit, our State Department was a foreign mission.

— John Elvin

## The Washington Times

TUESDAY, SEPTEMBER 22, 1987

MAR 23 1988

2631 Lord Baranof Drive  
Anchorage, Alaska 99517

March 21, 1988

Hon. Rick Uehling  
Alaska State Senate  
Pouch V  
Juneau, Alaska 99811

Dear Senator Uehling:

The enclosed cutting is from the Sunday, February 28, 1988, issue of the Parkersburg (West Virginia) News, an informative journal serving the Mid-Ohio Valley. I regret that it arrived somewhat the worse for its travels.

I am a native of Parkersburg and a 34-year resident of Alaska, but I do not know Mrs. K. N. McCoy, the writer. That she is so well informed concerning the issue mentioned and the personalities concerned suggests strongly that she is a resident here, but perhaps she is resident elsewhere and only discharging a patriotic duty at the request of another. In any case, she is helping to spread the message.

Please share the item with Senator Fisher and Roger Jenkins, whom I believe to be currently employed in the Legislature.

I wish you a most successful session.

*Bill*

William J. Moran

# Reader Fears That We'll Surrender Five Alaskan Islands

Editor of The News, 2/28/54  
Dear Sir:  
Did you know that the State Department of the United States has surrendered, in complete eight negotiating sessions with the Soviets, intending to carry out the surrender of five strategic Alaskan islands and the most oil-rich, fish-rich waters in the Soviet Union, early this year without signing a treaty which would appear to be ratified by

Congress? This is arrogant and unconstitutional.  
In Congress, William Danford has introduced a bill H.R. 341, along with 30 co-sponsors to require a treaty in case of any boundary line or territory transfer agreements. Sen. Jesse Helms intends to introduce a similar bill in the Senate.  
The Alaskan legislature is gearing up behind state Sen. Rick Uehling whose SJR 12 protests strongly the

exclusion of Alaska from the negotiating sessions and final of the State Department's plan.  
In 1946, Alaskan Rep. Roger Jenkins sponsored a resolution urging the State Department not to yield to Soviet demands over a boundary line in the oil-rich and fish-rich Bering sea, and the Senate passed a resolution sponsored by State Sen. Paul Flaher restating Alaskan sovereignty over the five islands in the Arctic

Ocean.  
California Assemblywoman Marian LaFollette defends the Alaskan position other State governors and legislators should introduce bills like those of Rep. Jenkins and Sen. Flaher, and stand with Alaska and California. Let us urgently request that our state senators and representatives do so. Also write to our U.S. congressmen, asking them to co-sponsor the U.S. legislation.

These islands are a front line of defense against the Soviets and it would be a tremendous diplomatic victory for them to have them. The surrender of the Panama Canal pales in comparison. The Soviets are also bullying the Norwegians in their part of the Barents Sea for both economic and military reasons. They are eyeing the Barents Sea for oil and war.  
Sincerely,  
MRS. K.N. McCOY

Parkersburg (West Virginia) News, February 28, 1954

Senator Rick Uehling  
State Capitol Bldg  
Juneau, AK 99801

1/13, 88

JAN 19 1988

Dear Senator Uehling:

I've been hearing for 10 or 15 years that Russia is trying to get Wrangel Island away from the U.S.A., by claiming it is theirs. I imagine my shock & dismay when I saw in a newspaper that the U.S. State Dept. has held eight secret sessions with the Soviets to negotiate away a huge chunk of U.S. territory (including Wrangel Island & 4 others) over twice the size of California. Who do these guys think they are, to do that and keep you and all the other elected representatives of the people of the State of Alaska out of the meetings.

This is a great American National Resource, a treasure of oil, minerals, & fishing. It's unconstitutional, illegal, & I call it treason since Russia, by their own admission is our sworn enemy. I am not fooled by Gorbachev & glasnost, we have laws to deal with those arrogant dummies at the State Dept. I refer to Title 18 Sect 2381 & 238.

Please send me all the info you can on this matter, including names & addresses of those involved, & a copy of your SJR 12. Can you send me a map of the Wrangel Island area?

Thank you so much.

Sincerely,  
DL Hartley  
HCR 66 #324  
Ozellville, AL 3687

LOWELL H. BECRAFT, JR.  
ATTORNEY AT LAW  
209 LINCOLN STREET  
HUNTSVILLE, ALABAMA 35801

JAN 19 1988

(205) 533-2535

January 14, 1988

Sen. Rick Uehling  
c/o Mr. David Cobb  
P.O. Box V  
Juneau, Ak. 99811

Re: Wrangel Island "give-away"

Dear Sen. Uehling and Mr. Cobb:

I have recently read that your office is leading the fight against the U.S. State Department's effort to give Wrangel Island to the Soviet government. I commend your efforts and hope that you succeed.

I communicate with you on this occasion for the purpose of providing information to aid you in the battle with the State Department. There does exist a legal argument which I believe can offer you a very solid position to oppose any act of the State Department to give away Wrangel Island. That argument is based upon the extremely limited jurisdiction of the United States inside the states of the Union. I enclose herewith a short, introductory brief I prepared on the subject of federal jurisdiction.

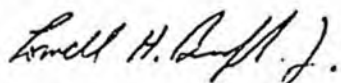
The ultimate position taken in this brief has the full and complete support of a 600 page government report on this issue; I have cited the report in my brief and I enclose herewith copies of a few pages from the report. This vital government report is now being privately reprinted and you may obtain a copy of it by sending \$25.00 to:

The Research Team  
P.O. Box 151127  
Salt Lake City, Utah 84115

I feel certain that this legal argument will be of immense help in your fight against the State Department, which has absolutely no jurisdiction over any non-governmentally owned land in Alaska. Further, for lands under rivers and seas, I can think of two cases, Pollard v. Hagan and Utah v. United States (decided in May, 1987) which will also help. Please seriously consider using this legal argument in your fight.

If I can be of assistance further, please feel free to call.

Sincerely,



Lowell H. Becraft, Jr.

cc: Governor of Alaska  
Attorney General of Alaska

PATRICIA S. ROGERS  
1151 Western Avenue, #A  
Glendale, California 91201  
(618) 243-4835

May 13, 1987

MAY 18 1987

The Honorable Rick Uehling  
Pouch V  
Juneau, Alaska 99811

Dear Mr. Uehling:

I am a former resident of Anchorage, Alaska, but left in 1972 and now live in California. Sometimes I wonder why I ever left.

I recently came across a "Letter to the Editor" in the Los Angeles Herald Examiner regarding a big give-away of some islands off Alaska to the Soviets. Since I love Alaska and am greatly concerned about anything regarding its future, I followed up on it. I have discovered that the islands in question, Wrangel being the largest which is presently occupied by the Soviets, has been for some time and they guard it closely, are not part of some big give-away since it is unsure that we truly have any legal claim to them. Also they are quite far from the current boundary.

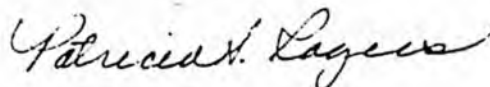
I am concerned, however, about the boundary negotiations and have been provided a copy of your Resolution SJR 12. (I've enclosed a copy, if it has been updated, I would appreciate knowing)

I have been assured by Senator Pete Wilson that the best interests of the United States and Alaska are being upheld, but after reading your Resolution, I still question what the boundary negotiations are really all about. Is it just concerning the matter of whether the boundary line previously established is a straight line or more of a semi-circle? I also question what the Soviets are seeking at this time.

I would appreciate any further information you can offer, and what the status of your Resolution is at the present time. It is of concern to me that representatives of Alaska are not being included in negotiations which would greatly affect their future. I realize with all the turmoil in Washington now Alaska isn't of prime concern to them, but I am nonetheless concerned.

Thank you.

Sincerely yours,



Patricia S. Rogers

SJR

15



## THE NEW REPUBLIC

FEBRUARY 22, 1988

# GO AHEAD, MAKE OUR DAY

The National Rifle Association has launched a new advertising campaign. "The new ads are in response to a trend we're seeing in the whole gun control debate," says NRA spokesman Michael Lashbrook. "We're saying, hey, let's get off these fringe issues." By fringe issues he means controversies over the NRA's support for legalized plastic guns that foil metal detectors, submachine guns, and armor-piercing bullets. Lashbrook says, "The core of this issue has always been self-defense. We just wanted to remind people of that."

NRA advertisements used to emphasize the use of guns for hunting and the portrayal of gun owners as normal, healthy Americans. Now nine full-page ads in the *Washington Post*, the *New York Times*, and other newspapers emphasize a different message. One shows a high-heeled shoe with the heel ripped off. The headline says: "He's followed you for two weeks. He'll rape you in two minutes." Another shows a bent and twisted woman's locket. It reads: "Your mother just surprised two burglars who don't like surprises." A third presents a pair of shattered glasses with the caption, "You were beaten to death last night." It ends by asking, "Who cares?"

These advertisements pay lip service to the idea that they're not advocating the ownership of guns, merely demanding the right for those who wish to exercise it. But their actual point is clear enough. The message to women is that they are always vulnerable except when they're armed. The message to men is that they may not be doing all they can to protect their families. The alternative to "a bat, a bodyguard, or a handgun" is "your kids [hearing] your screams." The ads also suggest that if an unarmed

person is attacked, the assailant will be coddled by the media, the law, and the political system. Armed, at least you have a fighting chance.

The graphic nature and emotional manipulation of these ads have provoked criticism from gun control organizations and the media. But both sides in the gun debate have resorted to emotional advertising. What about the factual assertion that carrying or keeping a handgun is no more than a sensible precaution in a dangerous world? In several advertisements, the NRA offers statistics to strengthen its case. These deserve closer examination.

*The U.S. Department of Justice found that only three percent of rape attempts against armed victims are completed.* This is an impressive figure. It implies that carrying a gun can prevent rapes 97 percent of the time. It doesn't say what percentage of rape attempts against unarmed victims are completed. Nor does it say how many people are victimized by guns that were purchased to guard against rape attempts but found other uses. The source of the statistic is a Justice Department report published in 1979 called "Rape Victimization in 26 American Cities." Fewer than 50 victims were interviewed for the report, far fewer than the minimum needed to draw a statistically reliable conclusion. After the advertisement came out, the Justice Department released a statement rebutting the NRA's claim.

What more reliable studies have shown—and what the police say—is that pulling a handgun in a dangerous situation is more likely to end your life than to save it. Since most people aren't trained to handle a gun in such situations, attackers can often easily take the gun away. And even people who are trained have difficulty firing at a

flesh-and-blood target. That hesitation gives the attacker time to respond, frequently with more violence than he otherwise would have employed.

According to U.S. Department of Justice research [says the NRA], 91 percent of active handgun-carrying felons believe they could get their hands on an illegal, black market gun within "a few days" of release from prison. The idea here is that gun control laws don't keep criminals from buying guns, but they do keep guns away from honest people who wish only to protect themselves. The NRA uses this statistic to argue against waiting periods and background checks for gun buyers, two provisions of a bill now being considered by Congress.

The figure comes from a 1986 Justice Department study in which incarcerated felons were asked where they bought their guns. Again the methodology is dubious. Prison inmates are not reliable survey subjects, and the fact that they

believe something, or say they believe it, doesn't make it true. But even if this "belief" is accurate, most guns available on the black market are there precisely because they've been stolen from people who acquired them legally. Handguns in particular are virtually impossible to keep track of. Gun control organizations estimate that there are between 30 million and 40 million handguns in this country. In a recent letter to the *Washington Post*, Senator Daniel Moynihan used a figure of 70 million. In fact, as the FBI admits, no one really knows just how many there are. Waiting periods and background checks would at least give some idea where these guns are going. They would also prevent some spur-of-the-moment killings, such as the one in which a Miami investor bought a gun immediately after the October stock market crash and killed his broker.

*Criminal research confirms that Americans thwart 650,000 at-*

## THE ZEITGEIST CHECKLIST

BY CHARLES PAUL FREUND

This Week

Last Week Weeks on Chart

### 1. PIPE SCREAM ✓

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*Message.* Since Gorbachev saved Reagan's elastic political skin last December, Reagan associates have resumed their role of surrogate bogeymen. The Meese pipeline story created bigger headlines than Wedtech ever did, and nobody's even seen the already infamous payoff memo. Meese may have gotten stuck being the administration's "man you love to hate," but what is wonderful is how he strains to fill the role.

### 2. FLATLAND ✓

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*Iowa.* You will not hear about Iowa again for four years—not what its overalled breakfasters think, how its economy is doing, how liberal the *Register* is, not about anything save potential disasters. Yet Iowans narrow the field. It is a quadrennial coverage then, e, on slow weeks, that the presidential process is absurd. Fix-it suggestions, however, remain low-grade background noise at best.

### 3. LIVING ROOM BORE ✓

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*Nicaragua.* Nicaragua's collapsed economy has recently received more attention than the *contras* as a motivation for peace. Although Sandinista mismanagement and corruption have contributed to the hardships, so have U.S. pressures. These stories have occasioned no empathetic response at all. Is the often emotional public willing to accept siege where it rejects war, or is it just the usual indifference to Latins?

### 4. OFFENSIVE LINE ✓

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*Sports racism.* Received wisdom is that the Super Bowl outcome proved something about black QBs. But this condescending focus takes the Campanis/Snyder line seriously. It is more insidious—and says more about the pathology of race relations—than many of the overt discrimination cases that have lately crowded the papers.

### 5. GUIDE TO THE COSMO ✓

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*AIDS.* AIDS is building as a story again, but confusion still outweighs panic. The controversial *Cosmo* piece arguing that heterosexual sex hardly ever results in AIDS appeared to strike a note already resonating in the culture. Koop's suggestion that no AIDS cure will ever be found raised few eyebrows—as did the discovery in the

\*Item resurfaces in the Zeitgeist after at least one week's absence.

U.S. of a second AIDS virus. The big AIDS story is giving i.v. drug users new needles, and that's a drug story.

### 6. BURNING BUSH ✓

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*Rather-Bush.* The moral of the Rather-Bush story, for Bush, is that the media abhor a type-violation the way nature abhors a vacuum. The line on Bush is that he's still Bertie Wooster, only now striking a false, belligerent pose with his interlocutors. Worse, Bush is now supposed to have a public Jeeves who's getting him through tight spots: Roger Ailes, Nixon's 1968 Svengali. If this takes, Bush won't be able to afford more belligerence.

### 7. GRIN AND BAYER IT ✓

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*Health.* Who says there's no good news? The key to reducing heart attack risk is reportedly already in your medicine cabinet, and no drug company stands to make a fortune from a patent. The aspirin story just gets more interesting. Nobody seems to understand why it's good for headaches to begin with, and now this.

### 8. LOAN STAR ✓

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*John Connally.* Connally was never popular with the media; he was typed a wheeler-dealer. Failure has transformed him into a courageous figure, protagonist of a Texas tragedy. Would Connally's story have spun this way a decade ago? Or is the bloodied-but-unbowed angle a subliminal extension of a similar theme involving the nation at large?

### 9. NAKED HUNCH ✓

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*Drug legalization.* Ubiquitous drug-related crime, murderous turf gang wars, extensive international corruption, and the destruction of entire governments (RIP Colombia) are leading even some social conservatives to ponder the wisdom of drug prohibition. Licensing drugs, many are saying aloud, could exert both legal and social control on their use. Prohibition increasingly appears futile culturally, fatuous politically, and a staggering waste of money.

### 10. MY BACK PAGES ✓

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1

*The new nostalgia.* *Memories* magazine, PBS's series on TV history, the best-selling *Chronicles of the 20th Century*, and the defunct "Our World" series all point to a new kind of boomer nostalgia. Used to be that nostalgia dripped with sentiment, and was essentially social. This stuff is all recycled news and celebrities, the past's greatest hits. As with old Top 40 songs, the memories it evokes are essentially narcissistic.

stacks each year with privately owned firearms. This figure was calculated by Gary Kleck, a Florida State University criminologist. Kleck didn't actually do any research. Instead, he reinterpreted the results of a seven-year-old survey that asked respondents if they had ever used a handgun for self-protection. Since the term "self-protection" was broadly defined, respondents could answer positively if they heard a noise in the basement and checked it out with a gun. The study was based on a sample of about 1,000. Kleck extrapolated to come up with figures for the entire country. It's not clear how he came up with an annual figure when the original poll had no time limit.

By stressing the "preventive" uses of handguns, the NRA avoids confronting the fact that only a tiny percentage of handgun victims are criminals caught in the act of assault or burglary. Some 22,000 people were killed by handguns in 1986. Roughly 12,000 of those deaths were suicides, one statistic the NRA doesn't like to talk about. Another 1,000 deaths were fatal accidents. Then there were 9,345 intentional handgun killings. If the NRA's view of the world were accurate, these deaths would involve either a criminal shooting an innocent victim or an armed potential victim shooting a criminal. Now, anyone who purposefully kills with a handgun, except in self-defense, is a criminal by definition. But most are not professional criminals, and many might not be criminals at all if it weren't for the easy availability of guns. According to the FBI, 60 percent of murder victims are related to or acquainted with their killers. Many of these killings were crimes of passion that occurred simply because a handgun was around.

According to data from FBI reports compiled by the National Coalition to Ban Handguns, there were only 193 homicides committed in self-defense in 1986. That means it was roughly 115 times more likely that a handgun would be used in a suicide, murder, or accident than in legitimate self-defense against a criminal. These statistics vary little from year to year.

**WE SUPPORT** the banning of handgun sales, as do some 40 percent of Americans, according to Gallup. But the NRA still has the influence to keep that from happening. Republicans in particular are susceptible to pressure. At a recent meeting of the Gun Owners of New Hampshire, all six Republican presidential candidates vowed to veto pending gun control legislation. "My idea of gun control is a steady aim," Jack Kemp said.

At the very least, we could make it harder for people to own a handgun. As things stand, gun ownership is regulated by a hodgepodge of laws that vary from state to state. We should apply the same standard to private gun ownership that we do to automobile ownership: by requiring that all gun owners pass a test to get a license, register guns with state bureaus, pay an annual tax on their guns, and carry mandatory insurance for gun-related accidents.

Perhaps it's encouraging that the NRA has been driven to new depths of deception and hysteria. It may be a sign that the gun lobby's long-standing campaign against common sense is getting more desperate.

## NOTEBOOK

□ THEY NEVER STOP:

### Job market looks dim for office workers in early '88

—Orange County Register, January 5

### Job Prospects Bright for Office Workers, Study Says

—Los Angeles Times, same day  
(thanks to Michael A. Fried, Garden Grove, California)

### Profit at Recovering BankAmerica

—New York Times, January 22

### BankAmerica's worst annual loss

—New York Daily News, same day  
(thanks to Larry Mone, New York, New York)

### Cocaine on Wane

—San Francisco Chronicle, January 18, page 18

### Alas For Parents — Now It's Cocaine

—same paper same day, same page  
(thanks to Robert H. Glidden, Oakland, California)

### Going to Europe? Don't hold your breath awaiting bargains

—Minneapolis Star Tribune, January 10

### Low dollar hasn't killed bargains in Europe

—same paper, same day

□ SEE DICK RUN, CONTINUED: Representative Richard Gephardt made great hay in Iowa denouncing nasty foreigners for keeping out American goods, especially American farm goods. For example, he said in Cedar Rapids the week before the Iowa caucuses: "Rice in Japan—a staple of their diet—costs seven times what it does in the United States, because they won't let any foreign rice in. It's not right. It's not just. It's not fair." Japan's rice policy is deplorable, to be sure. Just as deplorable as America's sugar quotas, which keep out foreign sugar in order to protect the wealth of a tiny group of domestic sugar growers. Michael Wines notes in the *Los Angeles Times* that Gephardt voted twice in the past few years to retain the sugar program. Because of this policy, sugar costs more than three times as much in the United States as it does on the world market. Gephardt says the difference is that Japan bans foreign rice completely, while we merely restrict imported sugar through quotas. This is of little comfort to nations such as the Philippines—nations we are rather anxious to help—that find our market blocked. "We've had a devil of a time keeping our sugar people in business," Gephardt told Wines, explaining his votes. Sure, and the reason has nothing to do

with foreign trade barriers to American sugar, any more than Japan's trouble keeping its rice producers in business has anything to do with foreign trade barriers to Japanese rice. If Gephardt's belief is that sugar producers must be kept in business whether they can compete fairly or not (and of course they can't), he should quit pretending that all he wants is "a level playing field."

## POSTCARD IRAQ

# GUNS AND PENCILS

### *Basra, Iraq*

Sometimes the roar of exploding shells is so loud that teachers at Basra University halt their classes while they decide whether to run for makeshift shelter in the sand-bagged lobby. One day, when a shell slammed into the roof of a nearby dormitory, a lecturer barely paused. "We continued our class," says law student Moad El Shawi, waiting in front of a wall of sandbags for the next class to begin. "The teacher said, 'This is just shelling.'"

The war along the frontier, just 15 or so miles from here, is in its eighth year. A professor of English who returned here two-and-a-half years ago after studying in the United States points to where shells have landed among small faculty bungalows. The hard cement blocks of the university—built several years ago as the campus retreated from across the Shatt-al-Arab river—face the road to Faw, the port 50 miles to the south that fell to Iran in 1986 and is now held by 30,000 Iranian troops. Shells fall on the road almost daily. A week before my visit, one of them killed eight people at another campus of the university several miles away.

Through it all, students learn to say what's expected, and what many of them appear to believe. Could the Revolutionary Guards of Iran's Ayatollah Khomeini break through the Iraqi lines, storm the shattered downtown, and reach the campus? "Impossible," says El Shawi. "It is further than the stars. They fire shells into the city because they have failed on the front."

In Basra, Iraq's second-largest city and once a thriving oil-rich port, defiance appears more genuine than in Baghdad, 350 miles northwest. Here, where the hulls of ships sunk early in the war wallow in the Shatt-al-Arab before a second line of bunkers manned by Iraqi soldiers, the reality is obvious. President Saddam Hussein, dictatorial, vainglorious, and intolerant, must be preferable to the alternative just a 130mm-cannon's range to the east.

The sight of students crowding the campuses appears to confirm the image of Hussein as an enlightened despot anxious to build up the country through education. The yearning for culture, for class, for a common sense of identity against a highly nationalist foe permeates the campaign to prepare the country's youth for war. "The main aim of Iran is to make Iraq backward, to make Iraq

close all schools and universities," says Anwar Mahlud Thiban, president of the National Union of Iraqi Students and Youth, through which the government channels all student activities outside the classrooms. "Our response is to keep them open."

Thiban describes himself as a Ph.D. candidate, but he looks nearly as old as Hussein, who is 51, and admits at the end of our conversation that they have known each other since their childhood. At best the students' organization is an arm for propaganda, churning out magazines, channeling campus activism and running summer camps and workshops. At worst, it's a cover for spying on behalf of Hussein's Ba'athist Party, which dominates it. Indeed, Thiban boasts of the union's founding in 1961 as part of the revolution against the "dictatorial, Communist regime" that overthrew the monarchy in the bloody 1958 coup. Hussein, in self-exile in Syria and Egypt in the early 1960s and a law student in Baghdad after the 1963 coup, saw the union as a device for surrounding himself with dedicated young allies—and for closely watching the nation's youth for signs of dissent. "After the success of the 1968 revolution, the real work of Iraqi students changed from negative resistance to the positive kind," says Thiban.

After a lifetime of student union brainwashing, many young people seem spontaneously supportive of Hussein. Children sing such ditties as "Oh, Father, Take Us to the Front," and profess, on television and radio, in the classroom and at meetings of the Young Pioneers (a socialist Iraqi equivalent of the Boy Scouts), their undying devotion to a man who came to full power only a year before going to war. "We sacrifice our lives for you, for the brave leader we can see at early dawn," says a winsome little girl on television. In high-pitched tones a boy loudly recites one of Hussein's favorite themes: "Iraq, the country of two rivers, the descendant of those great people of Babylon."

Thanks partly to the student union, which monitors primary, elementary, and high schools as well as the weekly "cultural" classes in the university, Iraqis learn the history of a civilization at least 8,000 years old. By the time they are out of grade school they know that society in the region reached its height in Babylon, under Nebuchadnezzar, until defeated by Persian hordes in 500 B.C. And every Iraqi child has heard of Qadissiya, the site of a great Persian defeat at Arab hands in 637 A.D. Hussein refers to the conflict with Iran as "The Qadissiya War." The military newspaper is named *Qadissiya*. The government runs a Center for the Rehabilitation of the Qadissiya War Victims, with special programs for handicapped veterans. History, as promulgated by Hussein, must repeat itself.

Not fooled by its own propaganda, however, the government appears painfully aware of the dangers of dissent. Five years ago casualty figures became unavailable. Trucks and cars bearing bodies from the front do not enter cities and towns by daylight. The government forbids public mourning and orders families to keep funerals brief. The soldiers, often fated to serve for the duration of a war without end, are rewarded with extraordinary privileges. They get a week's leave for every three on the front. Offi-

# Policeman 'just plain scared' of Florida's new gun law

By PETER KIERNAN  
Reuter

MIAMI — A new Florida law that will allow virtually anyone to carry a concealed weapon goes into effect Thursday, and one policeman said he is "just plain scared".

The new law was passed by the state legislature in May with support from the National Rifle Association (NRA) and quickly signed by the state's conservative governor, Bob Martinez.

According to state officials, some 130,000 permits will be issued annu-

ally under the new state regulations.

Both critics and proponents of handguns agree the law is the most liberal in the country. Under its provisions anyone who does not have a criminal record is entitled to purchase a \$125 state permit to carry a concealed weapon after passing a brief course — one to two hours — in gun safety.

"Can you imagine everyone carrying a concealed weapon just because they want to?" asked one Miami police sergeant. "It will be like Dodge City in the old days."

Dodge City, Kansas, was the northern rail terminus for cattle drives from Texas and Oklahoma. Cowboys were paid when the cattle were sold and the town became known for gunfights and killings.

Largely rural state legislators were undeterred by warnings by city lawmakers and police officials, who predicted that accidental shootings, suicides and crimes involving guns would rise dramatically. Florida already has the fourth-highest murder rate in the nation.

Jim Smith, Florida secretary of

state, whose office is responsible for issuing the permits, said people must realize that having a license to carry a weapon is not the same thing as having a license to use it.

"I'm concerned that those with the licenses will think that means they can go around being super cops," he told reporters recently.

Marion Hammer, the NRA lobbyist, dismissed such concerns. "The average citizen is very responsible," she said.

"Thousands of crimes have been prevented without a shot being fired

just because a criminal realized his intended victim was armed," she said, adding that the legislation was "as much a matter of restoring freedom as it is about guns."

Hammer tried unsuccessfully for several years to get this legislation passed. Previously, the state's democratic governor, Bob Graham, now a U.S. senator, had vetoed the proposed changes in the law.

When Martinez took over this year, however, "the time was ripe," said Barbara Lautman of Handgun Control Inc.

5-0354X

Bradley  
5/3/88

Original sponsors: Rodey, Szymanski,  
Uehling, et al.

1 IN THE SENATE BY THE JUDICIARY COMMITTEE  
 2 HOUSE CS FOR CS FOR SENATE JOINT RESOLUTION NO. 15 (Judiciary)  
 3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
 4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 Proposing an amendment to the Constitu-  
 6 tion of the State of Alaska relating to  
 7 the right of a person to keep and bear  
 8 arms.

9 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 \* Section 1. Article I, sec. 19, Constitution of the State of Alaska,  
 11 is amended to read:

12 SECTION 19. RIGHT TO KEEP AND BEAR ARMS. The [A WELL-REGULATED  
 13 MILITIA BEING NECESSARY TO THE SECURITY OF A FREE STATE, THE] right of  
 14 the people to keep and bear arms for lawful purposes shall not be  
 15 infringed. *Means*

16 \* Sec. 2. LEGISLATIVE INTENT. (a) In proposing the amendment to  
 17 art. I, sec. 19, Constitution of the State of Alaska, in sec. 1 of this  
 18 resolution, the legislature intends only that the proposed amendment clari-  
 19 fy the Alaska Constitution by providing that the right to keep and bear  
 20 arms is an individual right as well as a collective right. The amendment,  
 21 if adopted, should not be construed to preclude the regulation of the  
 22 manner in which arms may be borne, carried, or used. For example, the  
 23 adoption of this amendment should not be interpreted to repeal or to render  
 24 unconstitutional statutes or municipal ordinances regarding assault, mis-  
 25 conduct involving weapons, or other similar offenses.

26 (b) In the preparation of its neutral summary under AS 15.58.-  
 27 020(6)(C), the Legislative Affairs Agency shall consider the statement of  
 28 legislative intent contained in (a) of this section.

29 \* Sec. 3. The amendment proposed by this resolution shall be placed

1 before the voters of the state at the next general election in conformity  
2 with art. XIII, sec. 1, Constitution of the State of Alaska, and the elec-  
3 tion laws of the state.  
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5-0354X

Bradley  
5/3/88

Original sponsors: Rodey, Szymanski,  
Uehling, et al.

1 IN THE SENATE BY THE JUDICIARY COMMITTEE  
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27 (b) In the preparation of its neutral summary under AS 15.58.-  
 28 020(6)(C), the Legislative Affairs Agency shall consider the statement of  
 29 legislative intent contained in (a) of this section.

\* Sec. 3. The amendment proposed by this resolution shall be placed

1 before the voters of the state at the next general election in conformity  
2 with art. XIII, sec. 1, Constitution of the State of Alaska, and the elec-  
3 tion laws of the state.  
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# STATE OF ALASKA THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800

## LEGISLATIVE AFFAIRS AGENCY LEGISLATIVE REFERENCE LIBRARY

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

H. JUD.	5-7-88	1:30p.m.
H. JUD.	5-4-88	1:30p.m.
H JUD	4-20-88	1:30p.m.



# Alaska State Legislature

Please enter into the record my testimony to the House Judiciary  
committee name

committee on HCS CSS JR, dated 4-20-88  
bill/subject

The individual right of each Alaskan to lawfully keep and bear arms is very important. This right must not be infringed upon by any entity of the state, of a city or by a borough. I support SJR 15. I further request that the Resolution be amended to read "Right to Keep and Bear Arms. The right of the people to keep and bear arms for lawful purposes shall not be infringed"

Signed:

Thomas M. Scarborough  
Testifier

Self

Representing (Optional)

1676 Taraka Drive

Address

479-3412

Phone No.

Subject: S.J.R. 15 Right to Keep and Bear Arms.

It is good to know that this resolution is being processed. I had been advised that progress was stalled as the result of potential enforcement problems.

I am concerned with the unfortunate need for this type of legislative statement. The right to keep and bear arms has always seemed to be among those basic rights and responsibilities of citizenship within the limits of reasonable regulation. Situations such as the "Morton Groves-Style" bans, however, demonstrate loopholes in that basic right.

It seems that the main objection to the resolution has come as the result of language that could remove restrictions against illegal (fully automatic) weapons and possession by felons and intoxicated persons.

Whereas we generally consider rights of citizenship to include reasonable regulation and guidelines for responsible behavior, this does not seem to be spelled out in the resolution as written.

Amended language to state that intent can remove the objections while insuring the basic rights. Wording as follows is suggested.

... The right of the people to keep and bear arms shall not be infringed except for reasonable regulation

E.O. DRACKEN, 18910 GILNER HUGH-JUNIOR, #12  
(My typist is in British Memorial today)



# Alaska State Legislature

## House

Official Business

COMMITTEE ON STATE AFFAIRS

P.O. BOX V  
State Capitol  
Juneau, Alaska 99811

March 10, 1988

Jan Still  
Box 188  
Douglas, AK 99824

Dear Jan:

A few days ago you received a mailing from the Washington, D.C. office of the National Rifle Association requesting you to contact me regarding SJR 15, proposing an amendment to the Constitution of the State of Alaska relating to the right of a person to keep and bear arms. The letter claimed that the resolution had been "bottled up" in my committee and that I "single handedly" was restricting the progress of this resolution. To put it bluntly, that letter was wrong.

The Alaska Peace Officers Association, made up of law enforcement officials all over the state of Alaska asked for clarification in SJR 15 that reasonable regulation of the methods of carrying firearms (convicted felons, concealed weapons, etc.) would not be precluded. Such a clarification was also requested by the Alaska Criminal Justice Working Group which includes the Department of Public Safety, the Attorney General, the Court System, and others. I think they have legitimate concerns and a right to express them and I am not going to preclude their opportunity to testify just because some guy in Washington, D.C. doesn't care how we do things here in Alaska.

For your information, three hearings have been held on this resolution by the State Affairs Committee which I chair. On February 17, we heard from Senator Rodey, the sponsor of SJR 15, and from representatives of the National Rifle Association. On the 29th of February, we heard additional testimony from the NRA and from the Alaska Peace Officers Association. On March 2, we took the remaining testimony on the resolution, this time hearing from the Department of Law and the Department of Public Safety. We have held three hearings in the space of two weeks time, spending 2-1/2 hours of the committee's time on this resolution. The committee has made a serious effort to understand the complex legal issues involved and to hear from all interested parties.



NATIONAL RIFLE ASSOCIATION OF AMERICA  
INSTITUTE FOR LEGISLATIVE ACTION  
1600 RHODE ISLAND AVENUE, N.W.  
WASHINGTON, D. C. 20036

PRESERVE YOUR RIGHT TO KEEP AND BEAR ARMS IN ALASKA  
SUPPORT S.J.R. 15, THE CONSTITUTIONAL AMENDMENT

Dear NRA Member:

February 25, 1988

**Urgent!** The battle to protect your firearms rights is on in Juneau. As a sportsman in State House District 4B, your help is needed today to secure passage of S.J.R. 15, the right to keep and bear arms and firearms preemption amendment to your state constitution.

Make no mistake, passage of S.J.R. 15 is absolutely necessary in Alaska to clarify that the Alaska Constitution guarantees the individual right to keep and bear arms and ensure that localities may not pass "Morton Grove-style" handgun bans nor any other restrictive gun rights legislation.

The future of this critical bill rests largely in the hands of your State Representative, Fran Ulmer, who is Chairperson of the House State Affairs Committee. Representative Ulmer is currently refusing to allow the Committee to vote on S.J.R. 15, despite the overwhelming support shown for this bill. Representative Ulmer is holding the bill simply because the Alaska Peace Officer's Association (APOA) sent written dissent to the February 17 Committee hearing — but did not even make the effort to attend the hearing.

The opposition of the APOA is based on the mistaken belief that S.J.R. 15 will create a situation where felons are no longer excluded from firearm ownership. Additionally, they mistakenly believe S.J.R. 15 will invalidate some of the laws currently in effect in Alaska such as those regulating concealed weapons and possession of firearms by intoxicated persons.

It has been pointed out to the APOA and to Representative Ulmer that there is an extensive amount of court precedence which clearly shows that S.J.R. 15 will not preclude reasonable regulations on firearms such as those previously mentioned. These are facts -- backed by court decisions -- that cannot be ignored.

There is absolutely no doubt that the important language reforms in S.J.R. 15 are needed in the State of Alaska. Although many of you may feel that your right to keep and bear arms is protected by both the U.S. and your state constitution, this simply is not so! Recent court rulings at the federal level have rejected the Second Amendment to the U.S. Constitution as it relates to the states. What the courts have stated is that the Second Amendment applies only to the federal government; therefore, unless a state has a similar provision in its constitution, the firearms rights of the citizens are in extreme jeopardy!

And unfortunately, in Alaska, your current state constitutional amendment does not protect your right to keep and bear arms for hunting, recreational shooting, self defense or any number of legitimate reasons. Indeed, a recent opinion by the Alaska Attorney General on the meaning of Article I, Section 19, of the Alaska Constitution states: "The modern judicial view has increasingly found that the guaranteed right to keep and bear arms is not an individually protected right, but rather a collective right which allows the people of the various states to serve in a militia."

Original sponsors: Rodey, Abood,  
Bennett, et al

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 HOUSE CS FOR CS FOR SENATE JOINT RESOLUTION NO. 39 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 Proposing an amendment to the Constitu-  
6 tion of the State of Alaska relating to  
7 the right of a citizen to keep and bear  
8 arms.

9 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

0 \* Section 1. Article I, sec. 19, Constitution of the State of Alaska,  
1 is amended to read:

2 SECTION 19. RIGHT TO KEEP AND BEAR ARMS. The [A WELL-REGULATED  
3 MILITIA BEING NECESSARY TO THE SECURITY OF A FREE STATE, THE] right of  
4 a person [THE PEOPLE] to keep and bear arms for lawful purposes shall  
5 not be infringed.

6 \* Sec. 2. LEGISLATIVE INTENT. The legislature intends that the amend-  
7 ment clarify the Alaska Constitution by providing that the right to keep  
8 and bear arms is an individual right rather than a collective right. This  
9 amendment does not repeal or render unconstitutional statutes such as  
0 assault with a dangerous weapon or being a felon in possession of a firearm  
1 or similar laws, ordinances, or regulations of municipalities or instrumen-  
2 talities of the state.

3 \* Sec. 3. In the preparation of its neutral summary under AS 15.58.020  
4 (6)(C), the Legislative Affairs Agency shall include sec. 2 of this resolu-  
5 tion.

6 \* Sec. 4. The amendment proposed by this resolution and sec. 2 of this  
7 resolution shall be placed before the voters of the state at the next  
8 general election in conformity with art. XIII, sec. 1, Constitution of the  
9 State of Alaska, and the election laws of the state.

#

THE FOLLOWING PAGES WERE TREATED AS  
A UNIT IN THE ORIGINAL FILE.

CONSTITUTIONAL AMENDMENTS FOR  
THE RIGHT TO KEEP AND BEAR ARMS

"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."

These words, from the Second Amendment of the Constitution of the United States, have been used both in defense of, and as an argument against, the individual American's right to keep and bear arms.

Strengthening of a state's constitutional protection of the right to keep and bear arms--or a first-statement of that right--is needed for the following reasons:

First, although it was clearly intended by the framers of the 14th Amendment that states would be precluded from infringing on the right to keep and bear arms, the 2nd Amendment's protections have not yet been incorporated by judges using the 14th Amendment. For the right to be protected from state and local interference, the guarantee must be in the state constitution.

Second, despite the clear intentions of the authors of state constitutions which include the right to keep and bear arms, some judges feel all too free to write their own views into the state constitution. Such judges too frequently take the view that the protection was not of an individual right (despite its listing among other personal rights) or is subject to almost any regulation which does not prohibit possession of all kinds of firearms by persons (even if the restriction is such that it is necessary to take time, effort, money, and even hire a lawyer in order to exercise a constitutionally recognized "right"); or judges just say times have changed, and the framers wouldn't really want widespread gun ownership. In short, they rewrite state constitutions according to their own ideologies, claiming that people really want "gun control" and that the state constitution wouldn't include such protection of the right to keep and bear arms were it being written today.

Thus, it is necessary to make it clear that people want the state constitutions to clarify matters for judges and localities. It must be re-emphasized that the right to keep and bear arms is an individual right (as recognized by seven-eighths of the public--DMI '75 and '78), one which is intended to restrict state and local interference with the ability of law-abiding citizens to own and use firearms for protection of person and property (as well as for the common defense) and for sporting purposes. As shown in public opinion surveys and state referenda and initiatives, the right is overwhelmingly by the people. The guarantees, their meaning, and their contemporaneity must be made clear to local legislative bodies and to the judiciary.



NATIONAL RIFLE ASSOCIATION OF AMERICA  
INSTITUTE FOR LEGISLATIVE ACTION  
1800 RHODE ISLAND AVENUE, N.W.  
WASHINGTON, D. C. 20036

1986 NRA-ILA STATE LEGISLATIVE ISSUE BRIEF

**ISSUE:** Constitutional Amendment

**STATUS:** Forty-one states currently have an amendment to their state constitution guaranteeing the right to keep and bear arms.

**1986 UPDATE:** Because amending state constitutions generally require the approval of the state's voters, all action since 1985 has been targeted specifically to 1986, when the November general elections will provide the opportunity for such statewide votes.

West Virginia led the way in 1985 by passing H.J.R. 19, providing for a referendum on a state constitutional guarantee for the right to keep and bear arms on the ballot. State sportsmen organized to generate grassroots support and the measure passed by a record 83% margin on November 4.

Delaware is an exception to the general rule in that a constitutional amendment need not go before the state voters. Instead, it must be approved in consecutive years by two different legislative sessions. The first phase of this process has already been completed -- H.B. 554, providing for a Right to Keep and Bear Arms Constitutional Amendment, was overwhelming approved in the 1986 legislative session. It will be reconsidered in the 1987 session, and considering the impressive showing it made in 1986 and the fact that pro-sportsmen candidates fared very well in the November 4 elections, H.B. 554 could well be written into law by the spring.

**DISCUSSION:** "Guarantees of individual liberties under federalism have two components: the federal Constitution and state constitutions. Since the Supreme Court has not specifically held that the second amendment applies to the states, state guarantees on arms serve as an important bulwark against infringement, for it is the state courts at all levels, not the federal courts, that finally determine the overwhelming number of vital issues of life, liberty and property that trouble countless human beings of this Nation every year."\*

Today, forty-one states have amendments to their state constitutions which guarantee the right to keep and bear arms. In light of the increasing attention being given to our gun rights at the state level, and because there is a strong indication that sportsmen increasingly will be forced into court to defend this right, it becomes critical to have an unequivocal guarantee in each state constitution to protect sportsmen.

Those states currently without pro-gun constitutional amendments are: California, Delaware, Iowa, Maryland, Minnesota, Nebraska, New Jersey, New York and Wisconsin.

---

\* from "State Constitutions and the Right to Keep and Bear Arms," by Robert Dowlut and Janet Knoop, Oklahoma City University Law Review (Volume 7, #2 Summer, 1982).

HOUSE JOINT RESOLUTION NO. 18

(By Delegate J. Martin and Delegate Carmichael )  
(Introduced February 21, 1985 ; referred to the  
Committee on Constitutional Revision .)

Proposing an amendment to the Constitution of the State of West Virginia, amending article three thereof by adding thereto a new section, designated section twenty-two, relating to the right of a person to keep and bear arms; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

Resolved by the Legislature of West Virginia, two thirds of all the members elected to each House agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the State at the next general election to be held in the year one thousand nine hundred eighty-six, which proposed amendment is that article three thereof be amended by adding a new section, designated section twenty-two, to read as follows:

ARTICLE III. BILL OF RIGHTS.

§22. Right to keep and bear arms.

A person has the right to keep and bear arms for the defense of self, family, home and state, and for lawful hunting and recreational use.

1        Resolved further, That in accordance with the provisions  
2 of article eleven, chapter three of the code of West  
3 Virginia, one thousand nine hundred thirty-one, as amended,  
4 such proposed amendment is hereby numbered "Amendment No. 1"  
5 and designated as the "Right to Keep and Bear Arms  
6 Amendment" and the purpose of the proposed amendment is  
7 summarized as follows: "To allow a person to keep and bear  
8 arms for defense of self, family, home and state and for  
9 recreation."

10

11        NOTE: The purpose of this resolution is to guarantee a  
12 person the right to keep and bear arms.

13        Section twenty-two is new; therefore, strike-throughs  
14 and underscoring have been omitted.

ANALYSIS OF  
PROPOSED WEST VIRGINIA CONSTITUTIONAL  
GUARANTEE TO KEEP AND BEAR ARMS

A person has the right to keep and bear arms for the defense of self, family, home, and state, and for lawful hunting and recreational use.

This proposal explicitly protects the traditional lawful rights that gun owners assumed were guaranteed in West Virginia.

A Person

The proposed amendment guarantees an individual right. Nevertheless, a person in a high risk category would not enjoy this right. That, e.g., felons, minors, and the mentally infirm are treated differently has gained such universal acceptance that commentators mention only in passing that such persons do not enjoy the full benefits of this right. Dowlut & Knoop, State Constitutions and the Right to Keep and Bear Arms, 7 Okla. City U.L. Rev. 177, 191 & n. 71 (1982).

The Constitutions of 40\* states contain a right to bear arms. These guarantees have not been an obstacle to reasonable regulation. Statutes prohibiting possession of firearms, e.g., by convicted felons have been consistently upheld. Examples of such decisions include Carfield v. State, 649 P. 2d 865 (Wyo. 1982); State v. Fant, 53 Oh. App. 2d 87, 371 N.E.2d 588 (1977); State v. Amos, 343 So. 2d 166 (La. 1977); State v. Cartwright, 246 Ore. 121, 418 P. 2d 822 (1966); Jackson v. State, 68 So. 2d 850 (Ala. App. 1953), cert. denied 68 So. 2d 853 (1953). Over a century ago a court upheld a conviction under a statute forbidding selling, giving, or lending weapons to minors. Coleman v. State, 32 Ala. 581 (1858).

Keep and Bear Arms

The term "arms" refers only to such arms as are commonly kept by the people. Constitutionally protected arms would include the rifle, shotgun, and pistol. State v. Kessler, 289 Ore. 359, 614 P. 2d 94 (1980); Taylor v. McNeal, 523 S.W. 2d 148, 150 (Mo. App. 1975); Rinzler v. Carson, 262 So. 2d 661, 666 (Fla. 1972); People v. Brown, 253 Mich. 537, 235 N.W. 245 (1931); State v. Kerner, 181 N.C. 574, 107 S.E. 222 (1921); State v. Shelby, 90 Mo. 302, 2 S.W. 468 (1886); State v. Duke, 42 Tex. 455, 458-59 (1875); State v. Andrews, 50 Tenn. 165, 8 Am. Rep. 8 (1871).

\*In the 1984 elections the voters in Utah strengthened their present guarantee and the voters in North Dakota added a right to keep and bear arms to their constitution.

Bombs, cannon, poison gas and the like are arms which do not come under the protection of the constitutional umbrella. State v. Kessler, Rinzler v. Carson, People v. Brown, State v. Kerner, State v. Shelby, supra.

A person may only keep or bear constitutionally protected arms. The right to keep arms includes the following:

What, then, is involved in this right of keeping arms? It necessarily involves the right to purchase and use them in such a way as is usual, or to keep them for the ordinary purposes to which they are adapted. . . . The right to keep arms, necessarily involves the right to purchase them, to keep in a state of efficiency for use, and to purchase and provide ammunition suitable for such arms, and to keep them in repair. Andrews v. State, 50 Tenn. 165, 178, 8 Am. Rep. 8, 13 (1871).

The bearing of constitutionally protected arms may be regulated. Concealed carrying statutes, e.g., are routinely upheld. State v. Kessler, 289 Ore. 359, 614 P.2d 94, 99 (1980); Holland v. Commonwealth, 294 S.W. 2d 83, 85 (Ky. 1956); Porello v. State, 121 Oh. St. 280, 168 N.E. 135 (1929); McIntire v. State, 170 Ind. 163, 83 N.E. 1005 (1908); State v. Reid, 1 Ala. 612, 35 Am. Dec. 44 (1840). Even open carrying for an unlawful purpose may be prohibited. State v. Dawson, 272 N.C. 535, 159 S.E. 2d 1 (1968). A license may be required to carry a pistol away from one's home, place of business, or land. Schubert v. DeBard, 73 Ind. Dec. 510, 398 N.E. 2d 1339 (Ind. App. 1980). Carrying a gun while drunk is outside the protected boundaries of the right to bear arms. People v. Garcia, 197 Colo. 550, 595 P. 2d 228 (1979) (en banc). One may not be armed in court, church, at elections or concerts. Hill v. State, 53 Ga. 473, 476 (1874). Unauthorized parading with arms may be prohibited. Commonwealth v. Murphy, 166 Mass. 171, 44 N.E. 138 (1896). Discharging a firearm without lawful excuse within the city limits is not constitutionally protected conduct. State v. Johnson, 76 S.C. 39, 56 S.E. 544 (1907).

#### Defense of self, family, home

The lawful defense of self, family, and home has ancient roots. Halbrook, The Jurisprudence of the Second and Fourteenth Amendment, 4 Geo. Mason L. Rev. 1, 5 (1981); Caplan, The Right of the Individual to Bear Arms: A Recent Judicial Trend, 1982 Detroit Col. L. Rev. 789, 794; Dowlut & Knoop, State Constitutions and the Right to Keep and Bear Arms, 7 Okla. City U.L. Rev. 177, 183 (1982); Malcolm, The Right of the People to Keep and Bear Arms: The Common Law Tradition, 10 Hastings Const. L. Q. 285 (1983).

There is no social interest in preserving the lives and wellbeing of criminal aggressors at the cost of their victims. The only defensible policy society can adopt is one that will operate as a sanction against unlawful aggression. The police have no duty to protect the individual. Warren v. District of Columbia, 444 A.2d 1 (D.C. App. 1981) (en banc). One court reduced this principle of law to the succinct comment that "there is no constitutional right to be protected by the state against being murdered by criminals or madmen." Bowers v. DeVito, 686 F.2d 616, 618 (7th Cir. 1982).

The proposed guarantee is a victims' rights measure. It will guarantee that a person may exercise the choice to have arms to lawfully and effectively resist violent criminal aggression against self, family, or home.

#### Defense of state

During World War II the National Guard was activated for overseas service. In a number of states the armed citizens were called upon to perform militia duty in an effort to protect the state and fill the void left by the absence of the National Guard. The people served in the militia and used their personally owned firearms to protect the state. See Dowlut and Knoop, State Constitutions and the Right to Keep and Bear Arms, 7 Okla. City U. L. Rev. 177, 196-98, 233-35 (1982).

#### Lawful hunting and recreational use

The constitutions of New Mexico, Nevada, and North Dakota explicitly guarantee a right to have arms for lawful hunting and recreational use. The seminal idea for this right may be traced to a 1787 Pennsylvania proposal based on experiences with British game laws designed to disarm the people. Dowlut and Knoop, State Constitutions and the Right to Keep and Bear Arms, 7 Okla. City U. L. Rev. 177, 193 & n.72, 73 (1982).

The term "lawful" was inserted as a matter of superabundant caution to indicate that hunting and recreational uses may be regulated by law. Thus possessing a firearm on a game reserve for the purpose of hunting may be proscribed without infringing on the right to bear arms. State v. McKinnon, 153 Me. 15, 133 A.2d 885 (1957).

#### Conclusion

This legislative history indicates that the legislature is left with the power to deal effectively with criminal misconduct. On the other hand, it would prevent the decent people of this state from being disarmed. State v. Kessler, 289 Or. 359, 614 P.2d 94 (1980); City of Lakewood v. Pillow, 180 Colo. 20, 501 P.2d 744 (1972); City of Las Vegas v. Moberg, 82 N.M. 626, 485 P.2d 737 (Ct. App. 1971); Glasscook v. City of Chattanooga, 157 Tenn. 518, 11 S.W. 2d 678 (1928); People v. Zerillo, 219 Mich. 635, 189 N.W. 927 (1922); State v. Kerner, 181 N.C. 574, 107 S.E. 222 (1921).



SPONSOR:Reps. Van Sant & Davis; Reps. Anderson, Barnes, Bennett, Boykin, Brady, Buckworth, Carey, Caulk, Clark, Cordrey, Corrozi, B. Ennis, D. Ennis, Fallon, Gilligan, Hebner, Houghton, Jester, Jonkier, Mack, Oberle, Outten, Petrilli, Plant, Reynolds, Roy, Spence, Steele, Taylor, West, Wingate; Sens. Adams, Citro, Marshall, McBride, Minner, Sharp, Slatcher, Torbert, Vaughn

HOUSE OF REPRESENTATIVES

133RD GENERAL ASSEMBLY

HOUSE BILL NO. 554

MAY 8 1986

AN ACT PROPOSING AN AMENDMENT TO ARTICLE I OF THE CONSTITUTION OF THE STATE OF DELAWARE RELATING TO THE RIGHT TO KEEP AND BEAR ARMS FOR THE DEFENSE OF SELF, FAMILY, HOME AND STATE, AND FOR HUNTING AND RECREATIONAL USE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each House thereof concurring therein):

- 1 Section 1. Amend Article I of the Delaware Constitution, by adding  
2 thereto a "Section 20" to read as follows:  
3 "Section 20. A person has the right to keep and bear arms for the  
4 defense of self, family, home and state, and for hunting and recreational  
5 use."

SYNOPSIS

This is the first leg of a constitutional amendment that explicitly protects the traditional lawful right to keep and bear arms.

STATE CONSTITUTIONAL GUARANTEES ON  
THE RIGHT TO KEEP AND BEAR ARMS

Forty-one (41) states have constitutional guarantees on the right to keep and bear arms.

Alabama: That every citizen has a right to bear arms in defense of himself and the state. Article I, Section 26.

Alaska: 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. Article I, Section 19.

Arizona: The right of the individual citizen to bear arms in defense of himself or the State shall not be impaired, but nothing in this section shall be construed as authorizing individuals or corporations to organize, maintain, or employ an armed body of men. Article 2, Section 26.

Arkansas: The citizens of this State shall have the right to keep and bear arms for their common defense. Article II, Section 5.

Colorado: The right of no person to keep and bear arms in defense of his home, person and property, or in aid of the civil power when thereto legally summoned, shall be called in question; but nothing herein contained shall be construed to justify the practice of carrying concealed weapons. Article II, Section 13.

Connecticut: Every citizen has a right to bear arms in defense of himself and the state. Article I, Section 15.

Florida: The right of the people to keep and bear arms in defense of themselves and of the lawful authority of the state shall not be infringed, except that the manner of bearing arms may be regulated by law. Article I, Section 8.

Georgia: The right of the people to keep and bear arms, shall not be infringed, but the General Assembly shall have the power to prescribe the manner in which arms may be borne. Article I, Section I, para. VIII.

Hawaii: 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. Article I, Section 15.

Idaho: The people have the right to keep and bear arms, which right shall not be abridged; but this provision shall not prevent the passage of laws to govern the carrying of weapons concealed on the person, nor prevent passage of legislation providing minimum sentences for crimes committed while in possession of a firearm, nor prevent passage of legislation providing penalties for the possession of firearms by a convicted

felon, nor prevent the passage of legislation punishing the use of a firearm. No law shall impose licensure, registration or special taxation on the ownership or possession of firearms or ammunition. Nor shall any law permit the confiscation of firearms, except those actually used in the commission of a felony. Article I, Section 11.

Illinois: Subject only to the police power, the right of the individual citizen to keep and bear arms shall not be infringed. Article I, Section 22.

Indiana: The people shall have a right to bear arms, for the defense of themselves and the State. Article I, Section 32.

Kansas: The people have the right to bear arms for their defense and security; but standing armies, in time of peace, are dangerous to liberty, and shall not be tolerated, and the military shall be in strict subordination to the civil power. Kansas Bill of Rights, Section 4.

Kentucky: All men are, by nature, free and equal, and have certain inherent and inalienable rights, among which may be reckoned: \*\*\* 7. The right to bear arms in defense of themselves and of the state, subject to the power of the general assembly to enact laws to prevent persons from carrying concealed weapons. Kentucky Bill of Rights, Section I, para. 7.

Louisiana: The right of each citizen to keep and bear arms shall not be abridged, but this provision shall not prevent the passage of laws to prohibit the carrying of weapons concealed on the person. Article I, Section 11.

Maine: Every citizen has a right to keep and bear arms for the common defense; and this right shall never be questioned. Article I, Section 16.

Massachusetts: The people have a right to keep and bear arms for the common defense. And as, in times of peace, armies are dangerous to liberty, they ought not to be maintained without the consent of the legislature; and the military power shall always be held in an exact subordination to the civil authority, and be governed by it. Massachusetts Declaration of Rights, Part I, Article XVII.

Michigan: Every person has a right to keep and bear arms for the defense of himself and the state. Article I, Section 6.

Mississippi: The right of every citizen to keep and bear arms in defense of his home, person, or property, or in aid of the civil power where thereto legally summoned, shall not be called in question, but the legislature may regulate or forbid carrying concealed weapons. Article 3, Section 12.

Missouri: That the right of every citizen to keep and b

arms in defense of his home, person and property, or when lawfully summoned in aid of the civil power, shall not be questioned; but this shall not justify the wearing of concealed weapons. Article I, Section 23.

Montana: The right of any person to keep or bear arms in defense of his own home, person, and property, or in aid of the civil power when thereto legally summoned, shall not be called in question, but nothing herein contained shall be held to permit the carrying of concealed weapons. Article II, Section 12.

Nevada: Every citizen has the right to keep and bear arms for security and defense, for lawful hunting and recreational use and for other lawful purposes. Art. 1, Section II, para. 1.

New Hampshire: All persons have the right to keep and bear arms in defense of themselves, their families, their property, and the state. Part First, Art. 2-a.

New Mexico: No law shall abridge the right of the citizen to keep and bear arms for security and defense, for lawful hunting and recreational use and for other lawful purposes, but nothing herein shall be held to permit the carrying of concealed weapons. No municipality or county shall regulate, in any way, an incident of the right to keep and bear arms. Article II, Section 6.

North Carolina: 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; and, as standing armies in time of peace are dangerous to liberty, they shall not be maintained, and the military shall be kept under strict subordination to, and governed by, the civil power. Nothing herein shall justify the practice of carrying concealed weapons, or prevent the General Assembly from enacting penal statutes against that practice. Article I, Section 30.

North Dakota: All individuals are by nature equally free and independent and have certain inalienable rights, among which are ... to keep and bear arms for the defense of their person, family, property, and the state, and for lawful hunting, recreatnal, and other lawful purposes, which shall not be infringed. Article I, Section 1.

Ohio: The people have the right to bear arms for their defense and security; but standing armies, in time of peace, are dangerous to liberty, and shall not be kept up; and the military shall be in strict subordination to the civil power. Article I, Section 4.

Oklahoma: The right of a citizen to keep and bear arms in defense of his home, person, or property, or in aid of the civil power, when thereunto legally summoned, shall never be prohibited; but nothing herein contained shall prevent the

Legislature from regulating the carrying of weapons. Article 2, Section 26.

Oregon: The people shall have the right to bear arms for the defence of themselves, and the State, but the Military shall be kept in strict subordination to the civil power. Article I, Section 27.

Pennsylvania: The right of the citizens to bear arms in defence of themselves and the State shall not be questioned. Article I, Section 21.

Rhode Island: The right of the people to keep and bear arms shall not be infringed. Article I, Section 22.

South Carolina: 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. As, in times of peace, armies are dangerous to liberty, they shall not be maintained without the consent of the General Assembly. The military power of the State shall always be held in subordination to the civil authority and be governed by it. No soldier shall in time of peace be quartered in any house without the consent of the owner nor in time of war but in the manner prescribed by law. Article I, Section 20.

South Dakota: The right of the citizens to bear arms in defense of themselves and the state shall not be denied. Article VI, Section 24.

Tennessee: That the citizens of this State have a right to keep and to bear arms for their common defense; but the Legislature shall have power, by law, to regulate the wearing of arms with a view to prevent crime. Article I, Section 26.

Texas: Every citizen shall have the right to keep and bear arms in the lawful defence of himself or the State; but the Legislature shall have power, by law, to regulate the wearing of arms, with a view to prevent crime. Article I, Section 23.

Utah: The individual right of the people to keep and bear arms for security and defense of self, family, others, property, or the State, as well as for the other lawful purposes shall not be infringed; but nothing herein shall prevent the legislature from defining the lawful use of arms. Article I, Section 6.

Vermont: That the people have a right to bear arms for the defence of themselves and the State -- and as standing armies in time of peace are dangerous to liberty, they ought not to be kept up; and that the militia should be kept under strict subordination to and governed by the civil power. Chapter I, Article 16.

Virginia: That a well regulated militia, composed of the

body of the people, trained to arms, is the proper, natural, and safe defense of a free state, therefore, the right of the people to keep and bear arms shall not be infringed; that standing armies, in time of peace, should be avoided as dangerous to liberty; and that in all cases the military should be under strict subordination to, and governed by, the civil power. Article I, Section 13.

Washington: The right of the individual citizen to bear arms in defense of himself, or the state, shall not be impaired, but nothing in this section shall be construed as authorizing individuals or corporations to organize, maintain, or employ an armed body of men. Article I, Section 24.

West Virginia: A person has the right to keep and bear arms for the defense of self, family, home, and state, and for lawful hunting and recreational use. Article III, Section 22.

Wyoming: The right of citizens to bear arms in defense of themselves and of the state shall not be denied. Article I, Section 24.

#### STATES WITHOUT CONSTITUTIONAL PROVISIONS:

Nine (9) states do not have a constitutional provision on arms: California, Delaware, Iowa, Maryland, Minnesota, Nebraska, New Jersey, New York, and Wisconsin.

COMMENTARY ON PROPOSED AMENDMENT TO ALASKA

RIGHT TO BEAR ARMS GUARANTEE

Article I, Section 19 of the Constitution of Alaska would be amended to read as follows:

SECTION 19. Right to keep and bear arms. The (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.

This proposal guarantees a broad individual right and explicitly protects the traditional rights that gun owners in Alaska always assumed were guaranteed. The Alaska proposal is a blending of the New Mexico, Nevada, New Hampshire, North Dakota, Colorado, Mississippi, Missouri, Montana, Oklahoma; and Utah guarantees.

I.  
TO WHOM THE RIGHT BELONGS

This guarantee would belong to the citizen of the state. Citizenship includes the full enjoyment of all rights and privileges. The full enjoyment of all rights and privileges is obviously not enjoyed by certain groups, including the following: convicted felons, lunatics, and illegal aliens. This principle of law is so well established that commentators only mention it briefly in passing. See Dowlut & Knoop, State Constitutions and the Right to Keep and Bear Arms, 7 Okl. City Univ. L.Rev. 177, 191 (1982). See also State v. Kessler, 289 Or. 359, 614 P.2d 94, 99 (1980).

II.  
WHAT CONSTITUTES ARMS

Constitutionally protected arms are those arms that are commonly kept by the people. The people of Alaska commonly keep and bear rifles, shotguns, pistols, revolvers, edged weapons, hatchets, and clubs. They do not possess weapons that are exclusively used by the military or weapons of mass destruction. Therefore, bombs, poison gas, or cannons do not come under the umbrella of the constitutional guarantee.

III.  
THE RIGHT TO KEEP AND BEAR ARMS

Arms may be kept or borne for defensive, recreational, and other traditional lawful purposes. Alaska's frontier tradition is to carry arms openly. See Nunn v. State, 1 Ga. (1 Kel.) 243 (1846); State v. Kerner, 181 N.C. 574, 107 S.E. 222 (1921); Glasscock v. City of Chattanooga, 157 Tenn. 518, 11 S.W.2d 678 (1928); City of Las Vegas v. Moberg, 485 P.2d 737 (N.M. App. 1971); City of Lakewood v. Pillow, 180 Colo. 20, 501 P.2d 744 (1972). The concealed carrying of arms may be prohibited in a public place. The state may require the obtaining of a license to carry an arm concealed. However, a concealed carrying license statute would have to be equitably administered. See Schubert v. DeBard, 73 Ind. Dec. 510, 398 N.E.2d 1339 (Ind. App. 1980).

The constitutional purpose for bearing arms would not be frustrated by a prohibition on carrying arms while drunk, to a polling place, court, public assembly, or in a manner calculated to inspire terror. The keeping or bearing of arms in the home or

place of business may be either open or concealed, keeping the castle doctrine in mind and the purpose of protecting a place of business.

IV.  
THE RIGHT SHALL NOT BE INFRINGED BY THE  
STATE OR ANY SUBDIVISION THEREOF

Neither the State nor any subdivision of the state could prevent the people from keeping or bearing constitutionally protected arms within the perimeters of the constitutional guarantee. Laws forbidding the sale of arms or ammunition, or preventing the repair, bearing, or keeping of constitutionally protected arms, laws requiring a license to possess or acquire arms; or the payment of special taxes, or requiring registration would be an infringement on the right to keep and bear arms. The guarantee would also provide for uniformity throughout the state. This would be a form of preemption. Units of local government could only enact legislation which was absolutely necessary and uniquely necessary for a unit of local government. Therefore, a city or village could regulate the discharge of firearms within its boundaries without infringing the right to keep and bear arms.

V.  
CONCLUSION

The proposal guarantees the fundamental right of a citizen to keep and bear arms for traditional purposes. This right may not be infringed. The misuse of arms falls outside the boundaries of the constitutional guarantee. The types of

misconduct that the legislature may forbid and punish are well-known and self-evident; examples include using arms to rob, harass, intimidate, or recklessly endanger someone, shooting in an unsafe place or manner, and poaching. Therefore, this proposal will not hinder the legislature in performing its duty to punish the misuse of arms.

Submitted by: Assemblymen Dyson, Baker,  
Parnell, Wood, Bradley, Barnett,  
Kubitz, Campbell, and Faulkner  
Prepared by: Assemblyman Dyson  
For Reading: September 15, 1987

ANCHORAGE, ALASKA

RESOLUTION NO. AR 87-\_\_\_\_\_

A RESOLUTION FOR THE ANCHORAGE MUNICIPAL ASSEMBLY CALLING FOR A STATE CONSTITUTIONAL AMENDMENT CLARIFYING THE INDIVIDUAL RIGHT TO KEEP AND BEAR ARMS

---

WHEREAS, Article 1, Section 19 of the Alaska Constitution guarantees a broad individual right and explicitly protects the traditional rights that gun owners in Alaska always assumed were guaranteed; and

WHEREAS, Alaska Senate Joint Resolution 15 would remove any ambiguous language and strengthen the State's constitutional protection of the individual's right to own and to lawfully use firearms and thus clarify to local legislative bodies and to the judiciary a clear intent expressed by the people of Alaska through a constitutional amendment.

NOW, THEREFORE, BE IT RESOLVED, that the Anchorage Municipal Assembly does hereby support the passage of SJR 15 and the placing of the clarifying amendment to the constitution before the voters in the next statewide general election.

PASSED AND APPROVED by the Anchorage Municipal Assembly this \_\_\_\_\_ day of \_\_\_\_\_, 1987.

\_\_\_\_\_  
Chairman

ATTEST:

\_\_\_\_\_  
Municipal Clerk

FD/lf



NATIONAL RIFLE ASSOCIATION OF AMERICA  
INSTITUTE FOR LEGISLATIVE ACTION  
555 CAPITOL MALL, SUITE 455  
SACRAMENTO, CA 95814  
(916) 440-2455

January 6, 1988

Representative Fran Ulmer  
1700 Angus Way  
Juneau, AK 99801

Dear Representative Ulmer:

It was a pleasure to meet you on my recent trip to Juneau. I am looking forward to working with Rupe Andrews this session on the attempt to amend Senate Joint Resolution 15 and pass it through the Legislature.

Our two goals with this amendment are to: (1) clarify that the Alaska Constitution guarantees the individual right to keep and bear arms; and (2) ensure that the state guarantee extend to local municipalities by explicitly stating that local municipalities may not deny nor infringe upon the right to keep and bear arms.

There is no doubt that this important language is needed in the State of Alaska. In our meeting, Rupe discussed the April 13, 1983, opinion of Attorney General Norman C. Gorsuch on the meaning of Article I, Section 19, of the Alaska Constitution: "The modern judicial view has increasingly found that the guaranteed right to keep and bear arms is not an individually protected right, but rather a collective right which allows the people of the various states to serve in a militia."

Since the passage of the Morton Grove, Illinois, handgun ban, over 100 communities have attempted to pass similar legislation nationwide. Such places in the northwest include Seattle, Washington; Eugene, Oregon; and Anchorage, Alaska. Clarifying that the state guarantee extends to local municipalities will curtail this movement in Alaska and ensure that state firearm laws will be enforceable throughout the state on an equal basis.

You asked for information discussing the question of individual versus collective rights and expressed concern that individual language would create a situation where certain classes of people (i.e., convicted felons, mentally incompetents, minors) could now own and possess firearms. The municipality of Anchorage also is concerned that this language would invalidate certain laws such as those regulating concealed weapons and proscribing possession of firearms by intoxicated persons.

There is a plethora of court decisions which should allay these concerns. The enclosed Law Review is very informative and will provide you with some specific citations (see pages 186-192). I have also enclosed a copy of the decision handed down in State of Oregon v. Delgado (see page 10, lines 17-21). Other

January 6, 1988

pertinent cases which you might be interested in reviewing include Holland v. Commonwealth, 294 SW2d 83 (1956), which limits carrying concealed and Eary v. Commonwealth, 659 SW2d 198 (1983), which rules that felons may be prevented from owning firearms. Since both Holland and Eary are from Kentucky, it is important to note that the Kentucky Constitutional Amendment begins: "All men are, by nature, free and equal...." The use of the plural of "man" specifically indicates that what is guaranteed is an individual right.

The most recent decision which is applicable to your questions was handed down by the North Dakota Supreme Court on November 19, 1987. State v. Rice Hill involved a felon who was found to be in possession of a firearm. The court opined that constitutional rights are not absolute and the right to keep and bear arms is subject to reasonable regulation. Specifically, they ruled that felons are not individual citizens and are precluded from the constitutional right of firearm ownership. You will note that North Dakota's constitutional language also specifically refers to an individual right.

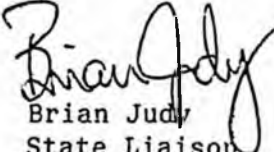
The National Rifle Association would like to have SJR 15 amended to read as follows:

"The [A well-regulated militia being necessary to the security of a free state, the] individual right [of the people] to keep and bear arms shall not be denied or infringed by the state or any subdivision thereof."

We would greatly appreciate it if you would consider offering this amendment in your State Affairs Committee at the very earliest date possible.

Please feel free to contact me at (916) 446-2455 or our Legal Counsel, Bob Dowlut, at (202) 828-6345 should you have any questions or need further information.

Sincerely,

  
Brian Judy  
State Liaison

BJ:bsw

Enclosures

cc: Senator Pat Rodey  
Rupe Andrews  
Bob Dowlut

terests and decided to secure a right to keep and bear arms in the face of any possible problems such a right might entail. For example, the colonies were not free from crime. In 1630, John Billington was hanged by the pilgrims at Plymouth colony for murdering John Newcomen with a blunderbuss. In 1678, Thomas Hellier was hanged in Westover, Virginia, for hacking three people to death. Thomas Lutherland was hanged February 23, 1691, in New Jersey for murdering John Clark, a boat trader, and stealing his supplies. Alexander White was hanged at Cambridge, Massachusetts, on November 18, 1784, for murder and piracy.<sup>36</sup> The Framers apparently felt that crime must be prevented by the penitentiary and gallows, and not by a general deprivation of a constitutional right.

The task is to harmonize the tension between the police power and a constitutional guarantee. Accordingly, a textual analysis of the guarantee must focus on to whom the right belongs, what is the purpose or reason of the right, and what persons are protected. The boundaries of the right are established once these issues are defined and delineated. The police power then cannot breach those boundaries, for "constitutions are not made to create rights in the people, but in recognition of, and in order to preserve them, and that if any are specially enumerated and specially guarded, it is only because they are peculiarly important or peculiarly exposed to invasion."<sup>37</sup>

#### COLLECTIVE RIGHT VERSUS INDIVIDUAL RIGHT DEBATE

The collective right view claims that while all of the people have a right, the individual person has no right.<sup>38</sup> This es-

36. J. NASH, *BLOODLETTERS AND BADMEN* 55, 255, 345, 606 (1973). "[A]rguments of policy must give way to a constitutional command . . ." *Payton v. N.Y.*, 445 U.S. 573, 602 (1980). In England, police stopped 2,000 cars over one weekend in a drunk driving campaign. They arrested four drivers. *Wash. Post*, Dec. 30, 1982, A 1, col. 4, at A 7, col. 1. Rights cannot be swept aside or ignored simply to make it convenient for the state to get at a small criminal element. Such an approach would render nugatory the benefits of a written constitution.

37. 2 J. TUCKER, *THE CONSTITUTION OF THE U.S.* 688 (1899).

38. *City of Salina v. Blaksley*, 72 Kan. 230, 83 P. 619, 620 (1905) (In interpreting a provision of the Kansas Constitution, which stated that "The people have the right to bear arms for their defense and security," the Supreme Court of Kansas stated that it "refers to the people as a collective body. . . . Individual rights are not con-

sentially means that the right to bear arms protects no one and guarantees nothing, for regardless of how draconian and unconstitutional a law may be, no individual would have standing to challenge such a law.<sup>39</sup>

The true inquiry as to the meaning of a constitutional guarantee concerns its understanding by the voters who, by their vote, have given life to the product of the convention.<sup>40</sup> The voters' understanding of a constitutional provision is determined by the common and ordinary meaning of the words employed.<sup>41</sup> Those words "will be understood in the sense most obvious to the common understanding, without resort to subtle and forced construction for the purpose of limiting or extending their operation."<sup>42</sup> Thus if the term "people" is used in the Bill of Rights to guarantee the individual the equal protection of the law,<sup>43</sup> to assembly and petition,<sup>44</sup> and freedom from unlawful searches,<sup>45</sup> it is incredible that the term "people" is then used strictly in a collective sense in guaranteeing the right to bear arms.<sup>46</sup> Therefore, a word repeatedly used in a constitution will bear the same meaning throughout the instrument.<sup>47</sup>

The seminal case which nullified the right to bear arms by holding that it is solely a collective right is *City of Salina v. Blaksley*.<sup>48</sup> James Blaksley was convicted of carrying a pis-

sidered in this section.").

39. Standing to sue is lacking where a party has a general interest common to all members of the public. *Schlesinger v. Reservists Committee to Stop the War*, 418 U.S. 208 (1974).

40. *People ex rel. Cosentino v. Adams County*, 82 Ill. 2d 565, 413 N.E.2d 870, 871 (1980).

41. *Burke v. Snively*, 208 Ill. 328, 340, 70 N.E. 327, 329 (1904) (Words "shall be given the meaning which they bear in ordinary use among the people").

42. *People v. Stevenson*, 281 Ill. 17, 25-26, 117 N.E. 747, 750 (1917).

43. KAN. CONST. Bill of Rights, §2.

44. *Id.* §3.

45. *Id.* §15.

46. *Id.* §4.

47. *Kirkpatrick v. King*, 228 Ind. 236, —, 91 N.E.2d 785, 789 (1950). "[T]he term 'people,' as used in the [state] constitution, is broad and comprehensive, and comprises generally all of the individual inhabitants of the state." *State v. Kofines*, 33 R.I. 211, —, 80 A. 432, 437 (1911).

48. 72 Kan. 230, 83 P. 619 (1905). Restricting the right to bear arms to a collective right has been specifically rejected by other courts. See, e.g., *People v. Nakamura*, 99 Colo. 262, 62 P.2d 246 (en banc 1936); *State v. Dawson*, 272 N.C. 535, —, 159 S.E.2d 1, 9 (1968).

tol within the city "while under the influence of intoxicating liquor."<sup>49</sup> The conviction could have been sustained simply because such conduct is outside the boundaries of the guarantee.<sup>50</sup> The court chose "to treat the question [of bearing arms] as an original one."<sup>51</sup> It misread *In re Brickey*<sup>52</sup> by claiming that the case sanctioned the carrying of concealed weapons on constitutional grounds. *Brickey* struck down a statute which forbade the carrying of a pistol in town in any manner. The *Brickey* court specifically held that forbidding the carrying of concealed weapons would be a valid regulation of the arms right. The court also misread *Commonwealth v. Murphy*<sup>53</sup> by claiming that *Murphy* strongly supported the court's position. *Murphy* upheld a conviction for unauthorized parading by armed men. The *Murphy* court merely cited *Presser v. Illinois*,<sup>54</sup> which involved an unlicensed armed parade, in upholding the conviction.

The *Blaksley* court's claim that a Bill of Rights guarantee merely insures the people collectively a narrow right to bear arms only in the organized militia or any military organization provided by law<sup>55</sup> lacks other jurisprudential support. The Kansas Constitution defines the militia as all able-bodied citizens between twenty-one and forty-five years of age.<sup>56</sup> The Kansas Constitution also authorizes the legislature to organ-

ize, equip and discipline the militia.<sup>57</sup> This demonstrates that any collective right to bear arms in the militia is adequately covered by the militia article of the Kansas Constitution.<sup>58</sup>

Furthermore, the state's power to legislate on militia matters existed prior to the formation of the constitution and remains with the states.<sup>59</sup> The right of a state to maintain and use its militia is a power essential to the existence of a state.<sup>60</sup> The state has the authority to train its able-bodied citizens so that they may perform military duties or constabulary duties when called upon.<sup>61</sup>

The collective right theory suffers from a logical defect. It is conceptually difficult to see how something can exist in a whole without existing in any of its parts. The collectivists essentially claim that there is a nebulous entity that exists somewhere between the individual and the state which is so important that the Framers protected it with a constitutional guarantee. The respected Judge Cooley rejected the collective right view:

It may be supposed from the phraseology of this provision that the right to keep and bear arms was only guaranteed to the militia; but this would be an interpretation not warranted by the intent. The militia, as has been elsewhere explained, consists of those persons who, under the law, are liable to the performance of military duty, and are officered and enrolled for service when called upon. But the law may make provision for the enrolment [sic] of all who are fit to perform military duty, or of a small number only, or it may wholly omit to make any provision at all; and if the right were limited to those enrolled, the purpose of this guaranty might be defeated altogether by the action or neglect to act of the government it was meant to hold in check. The meaning of the provision undoubtedly is, that the people, from whom the militia must be taken, shall have the right to keep and bear arms, and they need no permission or regulation of

49. *Salina v. Blaksley*, 72 Kan. 230, —, 83 P. 619, 620 (1905).

50. Carrying a gun while drunk is outside the protected boundaries of the right to bear arms. *People v. Garcia*, 197 Colo. 550, 595 P.2d 228 (1979)(en banc); *State v. Shelby*, 90 Mo. 302, 2 S.W. 468 (1886). The right to arms is subject to regulations to promote the peace, order and security of society, "provided they do not nullify the constitutional right or materially embarrass its exercise." E. FREUND, *THE POLICE POWER* 90-91 (1904). "A statute which, under the pretense of regulating, amounts to a destruction of the right, or which requires arms to be so borne as to render them wholly useless for the purpose of defense, would be clearly unconstitutional." *State v. Reid*, 1 Ala. 612, 616 35 Am. Dec. 46 (1840). The prevailing view is that prohibiting concealed carrying of weapons does not infringe the private right to bear arms. "Any one, carrying a weapon for a laudable purpose, will not desire to conceal it." C. TIEDEMAN, *A TREATISE ON THE LIMITATIONS OF POLICE POWER IN THE U.S.* 13-14, 503 (1886).

51. *Salina v. Blaksley*, 72 Kansas. 230, —, 83 P. 619, 620 (1905).

52. 8 Ida. 597, 70 P. 609 (1902).

53. 166 Mass. 171, 44 N.E. 138 (1896).

54. 116 U.S. 252 (1886).

55. 72 Kan. 230, —, 83 P. 619, 620-21 (1905).

56. KAN. CONST. art. VIII, §1.

57. *Id.* §2.

58. *Id.* §§ 1-4.

59. *Houston v. Moore*, 18 U.S. (5 Wheat.) 1, 16-17 (1820). This reflects John Marshall's view that the states had retained their powers over the militia. 3 J. ELLIOT, *DEBATES ON THE FEDERAL CONSTITUTION* 419-21 (1836).

60. *Luther v. Borden*, 48 U.S. (7 How.) 1, 45 (1849).

61. *Hamilton v. Regents of Univ. of Cal.*, 293 U.S. 245, 260 (1934).

law for the purpose. But this enables the government to have a well regulated militia; for to bear arms implies something more than the mere keeping; it implies the learning to handle and use them in a way that makes those who keep them ready for their efficient use; in other words, it implies the right to meet for voluntary discipline in arms, observing in doing so the laws of public order.<sup>62</sup>

Kansas history of the nineteenth century demonstrates that the people were undoubtedly concerned with personal defense.<sup>63</sup> The guarantee to arms of the 1859 Kansas Constitution<sup>64</sup> is an exact copy of Ohio's 1851 constitutional guarantee,<sup>65</sup> and Ohio courts have interpreted their provision to secure an individual right to self-defense.<sup>66</sup> Thus the independent clause, containing command language, that "[t]he people have a right to bear arms for their defense and security" was undoubtedly intended to include a personal right to bear arms to protect one's person, family, or property against unlawful injury and to secure from unlawful interruption the enjoyment of life, limb, family or property. The autonomy of the right to arms clause is not undermined by the presence in the same section of independent clauses dealing with standing armies and the subordination of the military to the civil power, for arms guarantees in other states have similar clauses and their courts have found an individual right to bear arms for self-defense.<sup>67</sup> Hence, any claim that the arms guarantee is in-

extricably linked and strictly limited to military matters rests on a foundation of quicksand. The *Blaksley* decision disingenuously turns a constitutional guarantee into an intangible abstraction.

No attempt will be made to examine textual differences based solely on whether plural terms, such as people or citizens, or singular terms, such as person or citizen, are used because only one state, Massachusetts, has followed *Blaksley*.<sup>68</sup>

The collectivists' argument should not be followed by the courts because it has no historical support, no case law support prior to the Kansas decision, and is illogical since the very concept of a right is individual. The principle of rigid *stare decisis* has no application to an unconstitutional law or to even a course of action taken by the courts. "That an unconstitutional action has been taken before surely does not render that same action any less unconstitutional at a later date."<sup>69</sup> On one occasion, the U.S. Supreme Court branded a whole line of decisions it had pursued for nearly a century "an unconstitutional assumption of power by the courts of the United States which no lapse of time or respectable array of opinion should make us hesitate to correct."<sup>70</sup>

The term "people" should be interpreted to include individuals. However, all individuals are not guaranteed the right to keep and bear arms. The Framers were mindful that certain groups are not protected because they fall into a traditional high-risk category. Thus it matters not that the Framers used in the arms guarantee the term people, citizens, person or citizen. Felons, persons of tender years, idiots and lunatics are classes that have almost universally been excluded from the arms guarantee.<sup>71</sup>

62. T. COOLEY, GENERAL PRINCIPLES OF CONSTITUTIONAL LAW IN THE UNITED STATES OF AMERICA 298-99 (3rd ed. 1898).

63. *Parman v. Lemmon*, 119 Kan. 323, \_\_\_ 244 P. 227, 231 (1925) (Dawson, J., dissenting), *rev'd on rehearing*, 120 Kan. 370, 244 P. 232 (1926). The dissent was, in effect, adopted as the opinion of the majority on rehearing.

64. KAN. CONST. Bill of Rights, §4.

65. OHIO CONST., art. I, §4.

66. *Mosher v. City of Dayton*, 48 Ohio St. 2d 243, \_\_\_ 358 N.E.2d 540, 543 (1976) ("the right of an individual to bear arms" may be regulated in a "reasonable manner"); *City of Akron v. Dixon*, 36 Ohio Misc. 133, 303 N.E.2d 923, 924 (Akron Mun. Ct. 1972) ("the right secured by the Constitution . . . speaks of the citizen's self defense and security and to his right to attain those ends by bearing arms."); *State v. Hogan*, 63 Ohio St. 202, \_\_\_ 58 N.E. 572, 575 (1900) (individual right "for defense of self and property").

67. N.C. CONST. art. I, §30; *State v. Dawson*, 272 N.C. 535, 159 S.E.2d 1 (1968); *State v. Kerner*, 181 N.C. 574, 107 S.E. 222 (1921); OHIO CONST. art. I, §4. See note 66, *supra*; OR. CONST. art. I, §27; *State v. Kessler*, 289 Or. 359, 614 P.2d 94 (1980); VT. CONST. ch. I, art. 16; *State v. Rosenthal*, 75 Vt. 295, 55 A. 610 (1903).

68. *Commonwealth v. Davis*, 369 Mass. 886, 343 N.E.2d 847 (1976).

69. *Powell v. McCormack*, 395 U.S. 486, 546-47 (1969).

70. *Erie R.R. v. Tompkins*, 304 U.S. 64, 79 (1938) (quoting Holmes, J., dissenting in *Black & White Taxicab Co. v. Brown & Yellow Taxicab Co.*, 276 U.S. 518, 533 (1928)). See also *Monell v. Department of Social Services*, 436 U.S. 658 (1978); *cf. Brown v. Board of Ed.*, 347 U.S. 483 (1954) with *Plessy v. Ferguson*, 163 U.S. 537 (1896).

71. At common law a felony is such crime as occasions a forfeiture of all the offender's lands or goods and often subjects him to capital punishment. 4 W. BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND \*94. While at common law usually only the most serious offenses were felonies and the wrongful act had to be accompanied by a guilty mind, the modern trend is to make some felonies a strict liability

## V. CONSTITUTIONALLY PROTECTED ARMS

A textual analysis of state constitutions reveals that two separate categories of arms are protected: (A) those suitable

offense, even though for the most part such offenses are *mala prohibita* and not *mala in se*. For example, the mere possession of an unregistered rifle with a barrel under 16 inches is punishable by 10 years and a \$10,000 fine. 26 U.S.C.A. §§ 5845 (a) (3), 5861 (d), 5871 (1980). To prevent the people from being disarmed by the expedient of classifying regulatory offenses as felonies, the disqualification for felons should be restricted to common law felonies and their modern equivalents and to offenses requiring some state of mind above strict liability which are inherently inimical to life and property. The harshness of a felony conviction for a regulatory offense requiring no criminal intent was acknowledged in *United States v. Ruisi*, 460 F.2d 153, 157 (2nd Cir. 1972) ("application for a Presidential pardon would seem to be justified.") Congress has already recognized a narrow exception to the felony disqualification by exempting antitrust violations, unfair trade practices, restraint of trade, or other similar offenses relating to the regulation of business practices. 18 U.S.C.A. §921 (a) (20) (1976). For a list of disqualifications involving felons see *Doe v. Webster*, 606 F.2d 1226, 1233-34 (D.C. Cir. 1979); *State v. Noel*, 3 Ariz. App. 313, \_\_\_, 414 P.2d 162, 164 (1966).

Persons of tender years lack the experience, understanding, or power of mind to manage their affairs. They normally cannot hold office, vote, marry, enter into a contract, or drink alcohol. Where a parent is lacking, a guardian serves to protect their interests. Even when persons of tender years violate the law, society deals with them in a special court. Idiots and lunatics are so lacking in mental capacity that conservators are appointed to manage their affairs. Often they are institutionalized. Even the common law treated these two groups differently:

If one that wanteth discretion, killeth himselfe (as an infant, or a man *Non compos mentis*) he shall not forfeit his goods, & c. . . .

If one that is *Non compos mentis*, or an ideot, kill a man, this is no felony; for they have no knowledge of good and evill, nor can have a felonious intent, nor a will or mind to do harme. . . .

So it is, if a lunaticke person killeth another during his lunacie; (*Cok.* 4. 125.) for all acts done by him in his lunacie, are as the actes of an Ideot. . . . But an infant of such tender yeares, as that he hath no discretion or intelligence, if he kill a man, this is no felony in him.

M. DALTON, *THE COUNTRY JUSTICE* 216-17, 223, 224 (London 1622).

That not all people were included in the arms guarantee can be established by viewing early arms laws relating to freed blacks and American Indians. "Free persons of color have never been recognized as citizens; they are not entitled to bear arms, vote for members of the legislature, or to hold any civil office." *Cooper v. Savannah*, 4 Ga. 68, 72 (1848). See also *State v. Newsom*, 27 N.C. 203 (1844). The sale of firearms to American Indians was prohibited. 2 Stat. 139 ch. 13 (1802) and 2 Stat. 283 ch. 38 (1804).

Some early constitutional guarantees on arms were restricted to "free white men." FLA. CONST. art. I, §21 (1838); TENN. CONST. art. I, § 26 (1834); LA. CONST. tit. III, art. 60 (1845). The passage of the thirteenth and fourteenth amendments means that, except felons, the mentally infirm, and person of tender years, all of the people are guaranteed the right to arms. See also T. COOLEY, *A TREATISE ON CONSTITUTIONAL LIMITATIONS* 57 (7th ed. 1903).

(not indispensable) for militia use, and (B) those suitable for personal defense. In addition, two states also protect arms suitable "for hunting and recreational use and for other lawful purposes."<sup>72</sup> Arms suitable for deterrence against oppression are not treated as a separate category because an armed citizenry, regardless of the armament kept, serves as a latent and implicit deterrent to oppression.<sup>73</sup>

A. Colonial militia laws reveal that smoothbore shoulder arms, carbines, rifles, pistols, ammunition, swords, bayonets,

72. NEV. CONST. art. I, § 11, para. 1; N.M. CONST. art. II, § 6. In addition, the majority report of the Illinois Bill of Rights Committee indicates an intent to protect under ILL. CONST. art. I, § 22 "arms that law-abiding persons commonly employ for purposes of recreation or the protection of person and property." VI 6th Ill. Const. Convention, *Record of Proceedings* (1969-1970) at 87. In adopting the Virginia Bill of Rights, § 13, the interests of "the sportsmen of this State" and the right "to have arms in their homes, and they think that this will give them some protection" were also cited as reasons. *Proceedings & Debates of Virginia Senate Pertaining to Amendment of Constitution* 393 (Apr. 3, 1969) (Sen. Long).

73. Some cases equate arms "effective as a weapon of war" with arms suitable "to resist oppression." *Fife v. State*, 31 Ark. 455, 458, 461 (1876); *Aymette v. State*, 21 Tenn. (2 Hum.) 154 (1840). Other cases make no such equation. Arms suitable for militia use or self-defense are included in the term "arms" and both categories serve as a deterrent to oppression because historically "the arms used by the militia and for personal protection were basically the same weapons." *State v. Kessler*, 289 Or. 359, \_\_\_, 614 P.2d 94, 99 (1980).

The wellspring for a right to have arms for hunting is the Dec. 12, 1787, minority proposal in the Pennsylvania convention:

That the people have a right to bear arms for the defence of themselves and their own State, or the United States, or for the purpose of killing game; and no law shall be passed for disarming the people or any of them, unless for crimes committed, or real danger of public injury from individuals; and as standing armies in the time of peace are dangerous to liberty, they ought not to be kept up; and that the military shall be kept under strict subordination to and be governed by the civil power.

PENNSYLVANIA AND THE FEDERAL CONSTITUTION 1787-1788, 422 (1888).

The Pennsylvania minority was the first to propose an extensive Bill of Rights and their seminal ideas found their way into the Bill of Rights and became the first, second, fourth, fifth, sixth, eighth, and tenth amendments of the United States Constitution. E. DUMBAULD, *THE BILL OF RIGHTS AND WHAT IT MEANS TODAY* 50-56 (1957). The Pennsylvania minority proposal reveals an intent to guarantee the traditional uses of the times: for militia use, for self-defense, and for hunting. The reference to hunting was probably an effort to prevent the enactment of game laws designed to disarm the people. It also demonstrates that the common understanding of "to bear arms" was not restricted solely to militia purposes. In the 18th century "bear" meant "To convey or carry." S. JOHNSON, *A DICTIONARY OF THE ENGLISH LANGUAGE* (UNPAGINATED) (1979 reprint of 1755 ed.) The arms provision in LA. CONST. tit. III, art. 60 (1845), used the term "carry arms."



NATIONAL RIFLE ASSOCIATION OF AMERICA  
INCORPORATED 1871

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WHY DOES ALASKA NEED A FIREARMS PRE-EMPTION LAW?

The right to keep and bear arms is at the forefront of the various emotional issues that currently confront our society. Legislators, judges and bureaucrats at all levels of government — federal, state and local — are being called upon by citizens who wish to see this right expanded or restricted.

One underlying question is at what level should such legislation occur. The National Rifle Association has traditionally believed that the government most representative of the people is best. The explosion over the past few years of local ordinances that are more restrictive than current state law has, however, created the need for the states to pre-empt these local actions. Such legislation will prevent a hodgepodge of varying gun laws within a state, and thereby protect the law-abiding citizen not only from unwitting violation of the law, but also from arbitrary infringements of his or her rights. Indeed, in enacting pre-emption legislation, thereby expressly preventing local governments from infringing the rights of citizens and effectively eliminating the need for citizens to undertake costly litigation to protect their rights, state legislators fulfill their constitutional duty to protect the rights of citizens.

A state firearms pre-emption law will guarantee to the citizens of your state their right to own and use firearms for legitimate purposes based on state statutes and federal law.

Federal Law

Many people do not realize the full extent of federal law. Under the Gun Control Act of 1968 and as amended by the McClure-Volkmer Amendments (May 19, 1986), anyone convicted of a felony, adjudicated mentally defective, or addicted to drugs is prohibited from owning, purchasing or receiving or transporting any firearms or ammunition. The Gun Control Act also bans mail order sales of firearms by other than federally licensed dealers and requires that the sale of handguns is restricted to residents of the same state of the purchaser and seller.

Federal law also requires persons engaged in the business of dealing in firearms to be federally licensed. Dealers must

require from all firearms purchasers proof of identity and residence, and buyers must sign, under penalty of perjury, a statement certifying eligibility to purchase. Dealers are required to keep records of all firearms sales and are forbidden from selling handguns to persons under 21 or rifles and shotguns to persons under 18. Additionally, dealers are prohibited from making any sale of firearms or ammunition which would place the buyer in violation of state or local law.

#### The History of Firearms Pre-Emption Legislation

The first pre-emption firearms law was passed in the late 1960s, when, in response to the assassinations and urban rioting of that time, a number of localities passed "gun control" measures. Recognizing that these ordinances were based on emotional response rather than logical efforts to control crime, citizens of California and Pennsylvania led the way in enacting firearms pre-emption statutes. Today, some 15 states have firearms pre-emption either by statute or by legal precedent including: Alabama, Arizona, California, Indiana, Maryland, Massachusetts, Minnesota, New Jersey, New York, North Dakota, Pennsylvania, South Dakota, Virginia, Washington and West Virginia.

#### The Problem Behind Local Firearms Laws

The renewed popularity in passing local ordinances effecting gun ownership has triggered a great debate over the benefits of local rule on this issue. Clearly, all legislation — whether federal, state, or local — must be designed to ensure uniform and nondiscriminatory access to the rights and privileges of the citizenry as guaranteed by the U.S. and State Constitutions. Yet, a close look at the passage of the Morton Grove, Illinois, handgun ban, the most infamous of these local ordinances, proves beyond doubt that local firearms legislation does not guarantee this. In passing their ban, the Morton Grove Village Trustees were acting in defiance of a majority of the village citizenry as the opponents of the measure greatly outnumbered supporters at all public hearings on the ban. Morton Grove was acting not to control crime, which was minimal in the village, but rather to gain the attention of national media and to create a situation of harassment for individual firearms owners. Their gimmick worked! Today, Morton Grove is almost a household word and it is estimated that close to a thousand formerly law-abiding citizens are now technically "criminals" for exercising a right guaranteed by both the U.S. and the Illinois Constitutions.

The local intent to harass gun owners and sportsmen, rather than control crime, is even more apparent in the recent actions of the Friendship Heights (Maryland) Township. This tiny

community on the outskirts of Washington, D.C., originally attempted to ban possession of all handguns. The Montgomery County Council refused, however, to consider the proposal because it was a clear violation of the Maryland State Firearms Pre-Emption Statute. Friendship Heights then attempted to subvert state law by passing a complete ban on possession of all ammunition. Possession of ammunition for self-defense would have been outlawed, and anyone passing through Friendship Heights with a single bullet could have been subject to arrest and conviction — a \$500 fine for the first offense and up to six months in jail for the second offense.

The attempted F.H. bullet ban was defeated by the county council; Montgomery County, nonetheless, ultimately passed an ordinance which will prohibit the purchase of ammunition unless a firearm registration certificate is produced, although registration is not required in Maryland. While Councilman David Scull claims it is a symbolic step toward gun control at the state and federal level, in reality, this ordinance "is an abysmal waste of governmental energy and corrodes the respect without which law is a husk." (*The Washington Times*, June 20, 1983)

In response to this ban and other similar restrictive ordinances, a number of local jurisdictions have gone in the opposite direction and required all individuals or household heads to own a firearm. The NRA does not condone these mandatory ownership ordinances because we believe it is an individual's choice whether or not to possess a firearm.

#### How Can Pre-Emption Help?

Local firearms legislation serves only to create a crazy quilt of laws, resulting in gun owners running the risk of arrest, prosecution and confiscation of personal property for unwitting violation of local law by transporting a gun for sporting or other legitimate purposes across city or county lines. Such legislation clearly interferes with the "uniform application of laws" as citizens from one city are treated differently from citizens of another. Such legislation also puts an undue burden on the nation's 28 million hunters and 7 million competitive shooters who would be required to know the firearms laws of each various city and county they may pass through on their way to hunting areas or shooting matches.

We are greatly concerned by this eruption of hostile camps of "pro-gun" and "anti-gun" localities in states who do not have firearms pre-emption legislation. A state firearms pre-emption law will curtail this movement and ensure that state law will be enforced uniformly through the state on an equal basis.



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1986 NRA-ILA STATE LEGISLATIVE ISSUE BRIEF

**ISSUE:** Firearms Preemption Legislation

**STATUS:** Some thirty states have some form of preemption, either by state statutes or judicial ruling.

**1986 UPDATE:** The NRA continues to recognize preemption as the major legislative safeguard to prevent local anti-gun action and to guarantee all citizens their right to own and use firearms for legitimate purposes. For this reason, enacting firearms preemption in those states without this legislative safeguard remains the top legislative priority of this Division. In the 1986 legislative session, preemption was introduced in some 13 states and was signed into law in Mississippi, Tennessee, South Carolina, Rhode Island, and Delaware (strengthening existing language) and is expected to be approved by the Michigan House of Representatives on December 9. In addition, in New Mexico, voters approved a referendum adding firearms preemption to the state constitution.

**DISCUSSION:** The right to keep and bear arms is at the forefront of the various emotional issues that currently confront legislators, judges and bureaucrats at all levels of government. While the NRA has traditionally believed that the government most representative of the people is best, the recent popularity of restrictive local ordinances has created the need for the states to preempt such action. Local firearms legislation:

- \* creates a hodgepodge of varying gun laws within a state and gun owners run the risk of arrest, prosecution and confiscation of personal property for unwitting violation of local law;
- \* interferes with the "uniform application of laws" as citizens from one city are treated differently from citizens of another;
- \* puts an undue burden on the nation's 28 million hunters and 7 million competitive shooters who would be required to know the firearms laws of each various city and county they may pass through in their travels.

The first preemption firearms law was passed in the late 1960s, when, in response to the assassinations and urban rioting of that time, a number of localities passed "gun control" measures. Recognizing that these ordinances were based on emotional response rather than logical efforts to control crime, citizens in California and Pennsylvania led the way in enacting firearms preemption statutes.

The renewed popularity in passing local ordinances effecting gun ownership has triggered a great debate over the benefits of local rule on this issue. Clearly, all legislation -- whether federal, state, or local -- must be designed to ensure

uniform and nondiscriminatory access to the rights and privileges of the citizenry as guaranteed by the U.S. and state constitutions. Yet, a close look at the passage of the Morton Grove, Illinois, handgun ban, the most infamous of these local ordinances, proves beyond doubt that local firearms legislation does not guarantee this. In passing their ban, the Morton Grove Village Trustees were acting in defiance of a majority of the village citizenry, not to control crime, which was minimal in the village, but rather to gain the attention of national media and to create a situation of harassment for individual firearms owners.

In response to this ban and other similar restrictive ordinances, a number of local jurisdictions have gone in the opposite direction and required all individuals or household heads to own a firearm. The NRA does not condone these mandatory ownership ordinances because we believe it is an individual's choice whether or not to possess a firearm. Further, we are greatly concerned by this eruption of hostile camps of "pro-gun" and "anti-gun" localities in states who do not have firearms preemption legislation.

Some have raised the question that by vesting sole authority to enact firearms laws with the state, there is greater risk of having restrictive laws passed at the state level. This simply is not the case. States already have the power to pass such restrictions and if the political climate was not favorable to sportsmen, they would do so whether or not preemption was already in place. Fortunately for the gun owner, we have been able to fend off movements toward restrictions in all states over the past several years.

#### **BENEFITS:**

A state firearms preemption law will curtail this movement and ensure that state law will be enforced uniformly throughout the state on an equal basis. Indeed, in enacting preemption legislation, thereby expressly preventing local governments from infringing upon the rights of citizens and effectively eliminating the need for citizens to undertake costly litigation to protect their rights, state legislators fulfill their constitutional duty to protect the rights of citizens.



NATIONAL RIFLE ASSOCIATION OF AMERICA  
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OFFICE OF THE  
GENERAL COUNSEL

December 28, 1987

Joe Geldhof  
Assistant Attorney General  
2579-4 Douglas Highway  
Juneau, Alaska 99801

Dear Mr. Geldhof:

Mr. Ross requested that I respond to your inquiry on the decision to amend article I, §16 of the Maine Constitution.

Article I, §16 has been amended to guarantee that "Every citizen has a right to keep and bear arms; and this right shall never be questioned." The language "for the common defense" was deleted.

The people amended the constitution because they were displeased with the language in State v. Friel, 508 A.2d 123 (Me. 1986), holding that the right to bear arms is limited to the common defense under article I, §16. The court could have limited its decision to holding that a convicted felon may be prevented from bearing arms. It chose to ignore favorable case law from Arkansas and Tennessee on the interpretation of "common defense" language and instead cited a Massachusetts case which judicially repealed the right to bear arms. Dowlut & Knoop, "State Constitutions and the Right to Keep and Bear Arms," 7 Okl. City Univ. L. Rev. 177 (1982), discusses the various state constitutional guarantees.

Please feel free to contact this office if you have any questions.

Sincerely,

Robert Dowlut  
Deputy General Counsel

RD:sep

## STATE of Maine

Dennis Eugene FRIEL.

Supreme Judicial Court of Maine.

Argued March 13, 1986.

Decided April 18, 1986.

Defendant was convicted in the Superior Court, Sagadahoc County, of two counts of possession of firearm by a felon. The Supreme Judicial Court, Glassman, J., held that: (1) statute prohibiting possession of firearms by convicted felon did not violate Federal or State Constitutions; (2) evidence of revolver was admissible as seized in the course of a search pursuant to a valid warrant; (3) defendant's statement after arrest but prior to receiving *Miranda* warnings concerning location of shotgun was not pursuant to custodial questioning and was admissible; and (4) evidence of defendant's prior conviction was properly admitted to establish element of offense.

Affirmed.

## 1. Weapons ⇐1

Second Amendment of the United States Constitution operates as a restraint solely on the power of the national government and does not restrict the power of the states to regulate firearms. U.S.C.A. Const. Amend. 2.

## 2. Weapons ⇐1

The right to keep and bear arms declared by the State Constitution is limited by its purpose that arms may be kept and borne for the common defense and does not prevent the legislature from determining that common defense would not be served if a convicted felon possessed firearm in absence of permit. M.R.S.A. Const. Art. 1, § 16.

## 3. Weapons ⇐1

Statute prohibiting possession of firearm by convicted felon does not violate constitutional right to keep and bear arms

for the common defense. 15 M.R.S.A. § 393; M.R.S.A. Const. Art. 1, § 16.

## 4. Searches and Seizures ⇐193

A defendant who seeks to challenge the legality of a search or seizure conducted under a properly issued and executed warrant has the burden of proving the illegality.

## 5. Criminal Law ⇐394.6(4)

Defendant who, at suppression hearing, conceded that, in an unrelated case, legality of search was upheld, and who presented no evidence to support challenge of legality of search failed to prove that evidence of revolver found during search should have been suppressed.

## 6. Searches and Seizures ⇐121

Search warrant based on affidavit stating that information about gun in defendant's possession was acquired during course of previous search of apartment 13 days earlier in an unrelated case by officer who had probable cause to believe that the firearm was still there, was not based on stale information and evidence obtained pursuant to the warrant was not required to be suppressed.

## 7. Criminal Law ⇐414

Police officer's testimony that, at time of arrest, he handed defendant copy of arrest warrant and warrant for search of defendant's apartment and defendant stated that shotgun belonged to another supported finding that after arrest of defendant, police officer did not actually interrogate defendant or by his conduct engage in functional equivalent of interrogation of defendant, although defendant alleged that after placing defendant under arrest, police officer had questioned him concerning location of shotgun, in response to which defendant answered.

## 8. Constitutional Law ⇐266(4)

Admission into evidence of certified copy of defendant's judgment and conviction of larceny from the person in defendant's trial for illegal possession of a weap-

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on did not deprive defendant of due process, where defendant declined to stipulate to his conviction of a crime punishable by imprisonment of one year or more or failed to suggest another method by which the fact of his conviction could be admitted without indicating nature of offense, as defendant's prior conviction of crime punishable by one year or more of imprisonment was an essential element of the offense and had to be proven by State. 15 M.R.S.A. § 393, subd. 1; U.S.C.A. Const. Amend. 5.

#### 9. Criminal Law §369.2(1)

Where it is an element of the offense, evidence of prior conviction is highly relevant and not excludable under any rule. Rules of Evid., Rules 401, 403.

#### 10. Criminal Law §1172.1(3)

Trial court's instruction defining control in terms borrowed from definition of constructive possession constituted harmless error, if any, where the instruction closely paralleled instruction proposed by defendant and where firearms were proven to be in personal residence of defendant for an extended period of time and the court's instruction directed jurors' attention to whether defendant was aware of presence of firearms and had ability to reduce them to physical possession.

#### 11. Criminal Law §38

Although illegal possession or control of firearm prior to defendant's involvement in fight did not preclude competing harms defense for defendant's conduct following fight, jury's finding that defendant possessed or controlled gun prior to fight rendered competing harms defense inapplicable.

Geoffrey Rushlau, Asst. Dist. Atty. (orally), Bath, for plaintiff.

1. A third count alleging possession of a shotgun on or about August 12, 1983, was dismissed by

Andrews B. Campbell (orally), and Dennis Eugene Friel, pro se (orally), Bowdoinham, for defendant.

Before NICHOLS, ROBERTS, WATHEN and GLASSMAN, JJ.

GLASSMAN, Justice.

Dennis Friel appeals from the judgment of the Superior Court, Sagadahoc County, entered on a jury verdict of guilty on two counts of possession of a firearm by a felon in violation of 15 M.R.S.A. § 393 (1980 & Supp.1985-1986). On appeal, the defendant contends that section 393 on its face and as applied in this case violates the United States Constitution, amendment II and the Maine Constitution, article I, § 16, and that the trial court erred in numerous evidentiary rulings and in its instructions to the jury. For the reasons hereinafter set forth, we affirm the judgment.

In September 1983, the defendant was indicted for the illegal possession of a shotgun on or about July 23, 1983, and of a revolver on or about August 25, 1983.<sup>1</sup> From the evidence submitted at trial the jury rationally could have found the following facts: In 1968 the defendant was convicted of larceny from the person, 17 M.R.S.A. § 2102 (1964) (repealed 1975), and the court imposed a two-year suspended sentence. The defendant has never applied for a permit to possess a firearm.

Patrick Lane owned a 12-gauge shotgun. In May, 1983, Lane borrowed \$50 from the defendant and advised the defendant he would deliver the shotgun to the defendant as collateral for the loan although the defendant had not requested that he do so. Lane left the shotgun in a closet at the defendant's home while the defendant was absent. On July 23, 1983, the defendant was involved in a fight with two brothers named Alexander at a store located on the

agreement of the parties.

floor below the defendant's apartment. The defendant suffered an injury to his right eye. The Alexanders threatened to leave and to return with guns. After the Alexanders had departed, the defendant went to his apartment, loaded the shotgun, went outside, and fired a shot into the air. He continued to stand outside holding the gun until the police arrived. Some days after this incident, Lane came to the defendant's apartment, paid his debt and recovered the gun.

- On August 12, 1983, Loren Herrick, a deputy in the Sagadahoc County Sheriff's Department, participated in a search of the defendant's apartment and observed a .357 magnum revolver located on a window sill or shelf above the bed in the master bedroom. There were cartridges in the gun. On August 25, 1983, Herrick participated in a second search of the apartment and observed the revolver in the same location. The officer took possession of the revolver and later on the same day obtained possession of the shotgun owned by Lane.

The jury found the defendant guilty on both counts.

The defendant contends that 15 M.R.S.A. § 393 (1980 & Supp.1985-1986) on its face and as applied in this case violates the second amendment of the United States Constitution and article I, § 16 of the Maine Constitution and accordingly the indictments must be dismissed. - We disagree. Section 393 restricts the possession of firearms by a convicted felon. Section 393(1) provides that a person who has been

2. In full, section 393(1) provides:

No person who has been convicted of any crime, under the laws of the United States, the State of Maine or any other state, which is punishable by one year or more imprisonment or any other crime which was committed with the use of a dangerous weapon or of a firearm against a person, except for a violation of Title 12, chapter 319, subchapter III, shall own, have in his possession or under his control any firearm, unless such a person has obtained a permit under this section. For the purposes of this subsection, a person shall be

convicted of any crime punishable by one year or more imprisonment shall not "own, have in his possession or under his control any firearm" unless he obtains a permit.<sup>2</sup> Section 393(2)-(6) establishes the conditions and procedures by which a convicted felon may obtain a permit.

[1] The second amendment to the United States Constitution<sup>3</sup> is simply inapplicable to the instant case. This amendment operates as a restraint solely upon the power of the national government and does not restrict the power of the states to regulate firearms. *Miller v. Texas*, 153 U.S. 535, 538, 14 S.Ct. 874, 875, 38 L.Ed. 812 (1894); *Presser v. Illinois*, 116 U.S. 252, 265, 6 S.Ct. 580, 584, 29 L.Ed. 615 (1886); *Quilici v. Village of Morton Grove*, 695 F.2d 261, 269-70 (7th Cir.1982), cert. denied, 464 U.S. 863, 104 S.Ct. 194, 78 L.Ed.2d 170 (1983); *United States v. Kozerski*, 518 F.Supp. 1082, 1090 (D.N.H.1981), aff'd mem., 740 F.2d 952 (1st Cir.1984), cert. denied, \_\_\_ U.S. \_\_\_, 105 S.Ct. 147, 83 L.Ed.2d 86 (1985); *State v. Sanne*, 116 N.H. 583, 364 A.2d 630 (1976) (mem.).

[2] We turn then to examine the Maine constitutional provision. Article I, § 16 provides: "Every citizen has a right to keep and bear arms for the common defense; and this right shall never be questioned."

The right declared by section 16 is limited by its purpose: the arms may be kept and borne "for the common defense." Cf. *Commonwealth v. Davis*, 369 Mass. 886, 887-88, 343 N.E.2d 847, 848-49 (1976) (interpreting "common defense" as

deemed to have been convicted upon the acceptance of a plea of guilty or nolo contendere or a verdict or finding of guilty by a court of competent jurisdiction.

A violation of this subsection constitutes a Class C crime. § 393(8).

3. U.S. Const., amend. II provides:

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.

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"point[ing] to service in a broadly based, organized militia"); *State v. McKinnon*, 153 Me. 15, 21-22, 133 A.2d 885, 888-89 (1957) ("common defense" does not include hunting).

The constitution also provides for an express grant to the Legislature of "full power to make and establish all reasonable laws and regulations for the defense and benefit of the people of this State, not repugnant to this Constitution." Me. Const., art. IV, pt. 3, § 1 (emphasis added). The Legislature, by its enactment of section 393, reasonably determined that the common defense would not be served if a person, who by the commission of a felony had demonstrated a dangerous disregard for the law, possessed a firearm in the absence of a permit. Cf. *State v. Vainio*, 466 A.2d 471, 476 (Me.1983) ("demonstrated their unfitness to be entrusted with dangerous weapons"), cert. denied, 467 U.S. 1204, 104 S.Ct. 2385, 81 L.Ed.2d 344 (1984); *State v. Heald*, 382 A.2d 290, 295 (Me.1978) ("obvious legislative purpose of deterrence").

[3] The defendant contends that the Legislature may not make this determination and points to the language in article I, § 16 guaranteeing the right to "[e]very citizen" and providing that "this right shall never be questioned." We note that courts in other states with similar language in their constitutional provisions guaranteeing

4. *Bristow v. State*, 418 So.2d 927, 930 (Ala.Crim.App.1982) ("every citizen"; statute prohibiting possession of pistol); *People v. Blue*, 190 Colo. 95, 102-103, 544 P.2d 385, 390-91 (1975) ("The right of no person to keep and bear arms ... shall be called into question"; statute prohibits possession of firearm); *State v. Amos*, 343 So.2d 166, 167-68 (La.1977) ("each citizen"; statute prohibits possession of firearm); *Shepherd v. State*, 586 S.W.2d 500 (Tex.Crim.App.1979) ("[e]very citizen"; statute prohibits possession of firearm away from residence); *State v. Tully*, 198 Wash. 605, 89 P. 1 517 (1939) ("the individual citizen"; statute prohibits possession of pistol).

5. In addition to the cases cited in n. 4, courts have rejected challenges based on state constitutional keep-and-bear arms provisions to statutes making illegal a felon's possessing a firearm in

the right to keep and bear arms have rejected challenges, based on those provisions, to state statutes restricting or denying the possession of firearms by convicted felons.<sup>4</sup> The constitutional guarantee must be interpreted in its entirety and in light of its purpose. We find nothing in the statute itself or in the facts of this case that infringes upon the purpose. We hold therefore that 15 M.R.S.A. § 393 on its face and as applied in the instant case does not violate article I, § 16.<sup>5</sup>

We next address the defendant's contention that his motion for the suppression of the revolver from evidence was erroneously denied. The police seized the revolver on August 25, 1983, during the course of a search pursuant to a warrant. In his motion the defendant contended that probable cause for the August 25 search was based on information acquired by Deputy Herrick during the course of an allegedly illegal search of his apartment in an unrelated case on August 12, 1983, and further contended that the affidavit on which the warrant was based did not support probable cause because it rested on this "stale" information. At the suppression hearing on his motion, the State offered the August 25 warrant, affidavit and inventory. No evidence was offered by the defendant. After receiving the exhibits and hearing legal

the following cases: *Landers v. State*, 250 Ga. 501, 299 S.E.2d 707 (1983); *State v. Cobb*, 428 So.2d 935 (La.App.1983); *State v. Williams*, 358 So.2d 943, 946 (La.1978); *Carfield v. State*, 649 P.2d 865 (Wyo.1982). See also *State v. Noel*, 3 Ariz.App. 313, 414 P.2d 162 (1966) (statute prohibits convicted felon's possessing a pistol); *Eary v. Commonwealth*, 659 S.W.2d.198 (Ky. 1983) (statute prohibits convicted felon's possessing a handgun); *State v. Cartwright*, 246 Or. 120, 413 P.2d 822 (1966), cert. denied, 386 U.S. 937, 87 S.Ct. 961, 17 L.Ed.2d 810 (1967) (statute prohibits convicted felon's possessing a concealable firearm). Cf. *State v. Rascon*, 110 Ariz. 338, 519 P.2d 37 (1974) (condition that probationer not have a firearm under his control does not violate state constitutional "right of an individual citizen" to bear arms).