COURT RULES: THE RIGHT TO KEEP AND BEAR ARMS IS AN INDIVIDUAL RIGHT; BUT CAN BE INFRINGED

by Yorie Von Kahl © 2002

The *American Free Press* published an article by Mike Blair in its November 5, 2001 issue entitled *TREMENDOUS VICTORY FOR THE SECOND AMENDMENT*. The article, like many others around the country applauding the ruling of the case in question, has misappraised the outcome of that case to an astonishing degree. The Second Amendment has, in fact, received a death blow with the ingenious sophistry of the judges and the purpose of this article is to expose that deception and, hopefully, to enlighten patriots that might be wiser as to the political reconstruction of the Constitution at hand.

UNITED STATES OF AMERICA v. EMERSON

On October 16, 2001, the United States Court of Appeals for the Fifth Circuit overturned the judgment of the District Court for the Northern District of Texas, which had ruled that Title 18 United States Code, Section 922(g)(8)(c)(ii) was unconstitutional in violation of the 2nd Amendment right to keep and bear arms.[1]

The District Court, after reviewing the *common law* history behind the right to keep and bear arms and the perception of the right contemporary to the American Revolution, the ratification of the Constitution, its incorporation into the Bill of Rights and usage thereafter, concluded that the 2nd Amendment protected (and did not create) an individual right.

The statute § 922(g)(8)(c)(ii) states:

> "It shall be unlawful for any person… who is subject to a court order that…by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; …to ship in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce."

The *Commerce Clause* was the basis of Congress' jurisdiction in creating this act. This clause granting the federal government jurisdiction to regulate commerce with foreign nations and among the several states has been the predominant pillar of federal power since FDR's *New Deal*

and has been used to obliterate the concept of a Union of sovereign States, constitutionally guaranteed individual rights and limited government. Space won't permit full discussion of the *Commerce Clause* for immediate purposes, but understanding what *Commerce* means in the clause is critical to understanding how all other rights and liberties have been vanquished by expansion of the federal commerce power.[2]

A history of the *Emerson* case and its components is crucial to understanding how the federal government has become the unlimited state that it is.

The story begins with Mrs. Emerson's adulterous affair, which led to divorce proceedings. The divorce proceedings led to attempts to obtain custody of the Emerson's child and accusations by Mrs. Emerson that her husband, Dr. Emerson, had threatened her lover. The accusations, which were not specifically found by a court or jury, nevertheless resulted in an injunction against Dr. Emerson. Dr. Emerson has never been charged with assault or other such offense.

Of additional importance, Dr. Emerson purchased the weapon in question prior to the adulterous affair and proceedings. The issuance of the injunction, based upon mere allegations of an adulterous wife, made Dr. Emerson a criminal felon as the ink from the state judge's pen flowed into his signature on the injunction order.

The adultery – both a criminal felony against the State of Texas and a trespass against Dr. Emerson – went unpunished. In fact, it was rewarded by punishing its victim, Dr. Emerson himself. Although it is not evident in the opinions of the case, it is likely that the adulteress will gain their home and other effects and probably payments from the now-criminal felon, Dr. Emerson, based upon the obvious trend of reversed-values this nation has been pursuing.[3]

The District Court ruled that 18 U.S.C. § 922(g)(8)(c)(ii) violated the Second Amendment on its face and as applied.[4] More importantly, that court delved into the history of the Second Amendment and found that it protected an individual right. The court's analysis was very good and long overdue. It was accurate and impeccably written, and, to no one's surprise, it infuriated the *Cultural Communists*.

The federal government appealed and joining that appeal as *amici curiae* was a host of left-wing organizations with armies of lawyers.[5] The issue is the most fundamental one – *freedom versus slavery* – and the promoters of slavery came forward arrayed with every weapon of sophistry they could muster.

The Fifth Circuit Court of Appeals heard the argument and at long last returned their opinion overturning the lower court and upholding the statute. The real irony of the case – revealing the

political agenda behind it — is evident in the Circuit Court's conclusion that, indeed and beyond all question, the Second Amendment right to keep and bear arms is a personal and individual right of every citizen; but, lo and behold, it can be infringed at the whim of Congress.

Tyranny by any other name is, nonetheless, tyranny; and the infringement of the individual's right to keep and bear arms is a violation of the Constitution, the Supreme Law of the Land[6] and an act of usurpation and "treason."[7]

In fact, the Federalists of the day, when confronted by accusations that the new federal Constitution would gradually erode their rights and expand federal power into the domestic affairs of the people within the sovereign states, denied absolutely any such power in the new government. It was said that the new government was one of enumerated and limited powers only and any power not *expressly* granted simply did not exist.[8]

It was this fear of power by implication or construction (seeming to hide in ambiguous terms such as the "necessary and proper" clause) that raised resistance to the new Constitution and led to demand for a bill of rights to positively restrict the new government from constructive powers and to wholly remove power over specific subjects, while requiring in all matters that legitimately granted powers proceed only in express modes.[9]

The Second Amendment reads:

> "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."

There was no question at the time this article was incorporated into the Constitution, as an absolute and unqualified prohibition, as to its meaning. In fact, the recent successful revolution against England was the best evidence of its meaning, which, as will be seen below, was nothing short of the right of freemen to shoot government agents for encroaching upon their liberties. It is, simply, the right of self-defense, which included the right to resist tyranny.

The Supreme Court (and others) has acknowledged the right as inherent:

> "This is not a right granted by the Constitution. Neither is it in any manner dependent upon that instrument for its existence. The second amendment declares that it shall not be infringed;… this… means… that it shall not be infringed by Congress."[10]

SELF-DEFENSE AND RESISTING TYRANNY: AN ABSOLUTE RIGHT AND DUTY OF FREEMEN

The right of self-defense under the *common law* was well-acknowledged. It included the right to defend one's self, wife, husband, children, parents, master, servant, property and the community against open violence.[11]

Equally, if not more important, was the right necessary and essential to the "three primary rights" of Englishmen[12] upon which all other rights depended. This included the right to defend even against the King himself, a right that was exercised by the Barons at Runnymede in 1215 in resistance to forced taxation resulting in the *Magna Charta* and, later, at Bunker Hill by colonists of the American Militia signaling the beginning of American independence from Great Britain, also prompted by forced taxation.

The District Court in *Emerson* correctly noted, as far as it went, that:

> "The individual right to bear arms, a right recognized in both England and the colonies, was a critical factor in the colonist's victory over the British army in the Revolutionary War. *Without that individual right, the colonists never could have won the Revolutionary War*. After declaring independence from England and establishing a new government through the Constitution, the American founders sought to codify the individual rights to bear arms, as did their forebears one hundred years earlier in the English Bill of Rights."[13]

American independence and all rights secured thereby exist *only* because a minority of American colonists exercised their right to keep and bear arms. A vast bulk of the arms secured prior to that conflict was purchased *privately* from all parts of Europe and included every type of weapon from "fowling pieces" and "pistols" to quantity purchases of the best European military rifles and "canons."[14]

Samuel Adams, one of the most honored revolutionary figures, is an example of the vigilant patriot, whom figures such as George Washington, admonished future generations to emulate. Prior to the assault by government agents upon Boston colonists, Sam urged his fellow colonials:

> "…to provide themselves without Delay with Arms & Ammunition…in case they are called to defend themselves against violent Attacks of Despotism. Surely the Laws of Self Preservation will warrant it in this Time of Danger & doubtful Expectation."[15]

This patriotic example was followed throughout the colonies and, in 1775, the colonists issued a manifesto representing the United Colonies entitled *Declaration of Causes and Necessity of Taking Up Arms* against the government, which publicly recorded and announced the perceived acts of usurpation justifying armed resistance.

On July 4, 1776 came the *Declaration of Independence*, declaring for the first time that the colonies were thereafter "Free and Independent States" – a declaration of full sovereignty – and declaring "the Peoples" *right* to abolish the existing government over themselves and their territory:

"…it is their right, *it is their duty*, to throw off such Government…"[16]

Of course, if "the people" had no arms, such "rights" and "duties" could neither be exercised nor executed. Fortunately for the colonists they possessed gun for gun and canon for canon. Executing their duty, they *won* their freedom.

Naturally, the English Parliament declared those rallying the colonists to their "duty" to be outlaws. Until the end of the conflict George Washington was a notorious felon and those who supplied the arms – willingly violating English "law" were infamous criminals as well. But victors write their own history and the history of American Independence – the history of freemen escorted by arms – begin its first chapter with blood.[17] Freedom wasn't free.

The United States of America began to operate as a limited government in 1781 representing the thirteen States. Its powers were severely limited and almost non-existent within the borders of the several States. It was organized as a "perpetual union" of the States under the Articles of Confederation, drafted in 1776-1777.

The war ended with the Treaty of Peace of 1783.[18] The land was relatively peaceful and prosperous. But there was a serious problem brewing behind the scenes. The European money lenders were demanding repayment of their loans (and, of course, their interest) for financing the revolution and many states just didn't have it to pay. They were trying to recover from the war years. Additionally, large merchant companies were complaining of the taxes and tolls forced upon them by the States, as well as prohibitions against dumping or obtaining cheap goods within their borders. There was whispering that if Congress under the Articles of Confederation could not pay the debt and open the markets for foreign exploitation, new wars would begin and Congress would be replaced by someone who would.

Under pretense of emergency (although there was a real one of another sort), a "Convention" was called for to discuss the problem – the stifling of free trade – and to make recommendations to the States to deal with the problem. Many delegates refused to attend, believing the Convention was a pretext for designing a centralized government, which they considered to be beyond the powers of their commissions. Others walked out believing conspiracy and treason were underway. Others, yet, refused to sign the resolution for the Constitution upon completion, believing they had no authority to do so or that its powers were a detriment to their liberties, while others signed with great misgivings.

The workings of the Convention were conducted in extraordinary secrecy and it was boldly admitted amongst its members that if any word leaked out regarding the content and intent of the developing plan that the public would oppose it overwhelmingly. After the plan was finished concern gripped the plotters as to introducing it to the people at large, who neither authorized it nor were allowed to participate. It was resolved to exploit the people's ego, ignorance and vanity by creating a "preamble" that declared the people – *i.e.*, "We, the people" – had devised this most brilliant Constitution.

The newspapers – virtually all controlled by those desiring the new Constitution – reported that the wisest of wise men ever assembled had gathered to create the mysterious Constitution headed by no less than the virtuous and illustrious General of the Revolution, George Washington.[19]

The Constitution was unveiled to "the people" of the States with the same applause that had obscured its origin. Truly, the papers implied, the Messiah had returned in a piece of paper. Ratify it, and behold, surely Heaven would incorporate itself to the States. The "people" were ecstatic with the great accomplishment "We, the people" had brought forth. The papers assured them of *their* great wisdom – it only remained to get the necessary signatures on the paper for Heaven to release its bounty. The people were urged to melt down their recently won liberties and impress them into the glorious Golden Calf.

Probably no contract in history – and it was alleged to be a contract – suffered such scrutiny and criticism. The objectors to the plan were *federalists* – those who believed in a beneficial confederacy of the states. The promoters of the plan were *anti-federalists*, who believed in a centralized national government that would eventually consume the states. The newspapers, although publishing much of the criticisms of the new plan, deliberately distorted the roles and labeled the *federalists* as "anti-federalists" and the nationalists as "federalists."

Fanatical idealists *for* the new plan saw into the future a great new world order unfolding before their eyes that would eventually harness the entire world to their ideal.[20]

A majority of people, upon due reflection of concerns raised by suspicious and vigilant patriots, resolved that the new Constitution was, at best, a defective instrument for protecting their liberties or, at worst, a bold conspiracy to deprive them of their liberties. Intense debate ensued both publicly and, later, at the state conventions for ratification. Opponent's charged that the new Constitution granted unlimited powers of taxation – particularly fearing direct and capitation taxes, criminal and other jurisdiction over persons and personal property within the states, powers of subversion of trials by jury (especially in criminal cases), powers to create standing armies to oppress the people and rob them of their substance – among numerous other potential provisions of abuse. The fear of a federal *espirit de corps* – fear that federal officers would exercise license to oppress and federal judges would sanction their criminal acts leaving citizens without protection of law – was a major concern.

Defenders of the new Constitution denied the charges. In some cases these defenders went so far as to assert that the new Constitution actually gave the new government *less power* than they had under the Articles of Confederation.[21] Such absurdity only served to raise fears, as the announced purpose of the Constitution was specifically to grant larger powers to a new government.

Fear of ambiguous terms, undefined powers, unlimited taxation, and uncertainty of trials by jury combined with standing armies to carry out the ambiguous powers subject to the "necessary and proper" clause defined by potential tyrants in Congress inflamed by a passionate federal *espirit de corps* led to demands for either a new federal convention to remove the threatening defects or a bill of rights to remove some powers entirely, to compel operations of law subject to well-known modes of procedure and to declare areas of reserved powers and rights that were to remain inviolate under all circumstances.[22]

The *federalists* – *i.e.*, nationalists in federalist clothing – concurred among themselves that to risk another federal convention to remedy the defects of the Constitution would result in the total rejection of the plan, because, unlike the first convention secrecy was now lost and the people were now aware of the contents. With the window of opportunity fast closing the *federalists* began a campaign to convince the people that, *if they would just sign on*, the new government would protect their liberties by promptly inserting a bill of rights.

Many States ratified the Constitution *conditionally* – the condition being the immediate creation of a bill of rights, while others signed on with lists of reservations they felt were essential to be preserved by a bill of rights. Some States refused to sign on in the absence of a bill of rights.

The *federalists* by masterful deception managed to save the admittedly defective plan. They were ecstatic. But the situation was precarious and they were compelled to proceed with caution. The plan could be upset very easily.

James Madison, largely under the influence of Thomas Jefferson, assumed the position as champion for the bill of rights. He toured the states and gathered together a list of the most common concerns from which he drew up a draft for a bill of rights.

Madison had become very conscientious about these concerns and like other wise men with whom he associated, realized that a bill of rights not only had to protect individual rights from the abuse of government, but that government, itself, had to have protection against *democracy* – the ignorant masses to be able to protect those individual rights.[23] All learned and thoughtful men of the age were well aware of the results of *democracy* and, regardless their otherwise differing opinions and interests, agreed that *democracy* must remain chained down by religion, custom and law for the preservation of ordered culture.

THE PURPOSE AND OBJECT OF THE BILL OF RIGHTS, GENERALLY, AND THE SECOND AMENDMENT IN PARTICULAR

With a single exception it was universally agreed that a bill of rights was both a necessary and essential addition to the Constitution as proposed. That exception was raised by James Wilson from Pennsylvania and quickly exploited by Alexander Hamilton from New York. Hamilton, more than anyone else, vehemently objected to a bill of rights.[24] Hamilton was a lawyer and held deeply imperialistic visions. His version of nationalism was an expansionist view of centralized government working as guardian of free trade and monopoly based upon the concept of national debt and perpetual taxation. He even made an attempt early in the new government to monopolize mining and other business as a function of government.

Wilson's objection was simply that by creating a bill of rights usurpers would eventually use the enumerated rights as a claim that all else was given up. Hamilton grabbed this theme with all four feet and attempted to garner fear of a bill of rights. He first assured that "in strictness, the people surrender *nothing*; and as they retain *everything* they have no need of particular reservations." Continuing, he emphasized:

> "I go farther and affirm that bills of rights… are not only unnecessary in the proposed Constitution but would even be dangerous. They would contain various exceptions to powers which are not granted: and on this very account, *would afford a colorable pretext to claim more than were granted*… I will not contend that such a provision would confer a regulating power; but it is evident that *it would furnish, to men disposed to usurp, a plausible pretext for claiming that power."*
> *The FEDERALIST PAPERS*, No. 84, pp. 513-514 (Clinton Rossiter, Mentor Publ. 1961 ed.)(emphasis added).

Thus, the federalist position (at least for public consumption) was the same as the anti-federalists – *i.e.*, any attempt by the new government to exercise a power not expressly and unequivocally granted would be usurpation, an act of tyranny and treason.[25]

The recognized method of defending against such usurpation and tyranny was none other than the absolute right of the people to keep and bear arms. Hamilton, himself, emphasized the requisite formula for the defense against such usurpation:

> "The obstacles to usurpation and the facilities of resistance increases with the increased extent of the State, *provided the citizens understand their rights and are disposed to defend them."*
> *THE FEDERALIST PAPERS, supra*, No. 28, p. 180 (emphasis added).

If such usurpation were attempted, Hamilton emphatically noted the remedy:

> *"If the representatives of the people betray their constituents, there is then no recourse left but in the exercise of that original right of self-defense which is paramount to all positive forms of government, and which against the usurpations of the national rulers may be exerted…"* *id.* (emphasis added).

And Hamilton defined the *means* of "exerting" that "original right of self-defense…paramount to all positive forms of government":

> "The citizens must rush tumultuously to arms, without concert, without system, without resource, except in their courage and despair."[26]
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> *id.; DEBATES, supra*, Vol.2, p. 24 (If Congress usurps power it will be "high treason" for which "I stand ready to leave my wife and family, sling my knapsack, travel westward, to cut their heads off.") (Capt. Snow at the Massachusetts Convention).

Such sentiments were common among the patriots of the era – they called it "vigilance."

James Madison concurred that "ambitious encroachments of the federal government" would necessarily result in a "trial by force" based upon the people's "advantage of being armed." (*The FEDERALIST PAPERS, supra,* No. 46, pp. 298-299.)

Not only did no one deny this absolute right, it was repeatedly noted that the citizens were armed, would remain armed and, additionally, there was no power in the new government to prevent the free flow of arms into the states.[27]

Nevertheless, a healthy and patriotic distrust of government prompted and resulted in a Bill of Rights of which ten of those proposed were adopted as a full part of the new Constitution by which every federal and state official is bound to obey.[28]

The Bill of Rights was created for the express purpose of withdrawing power, limiting power, requiring that power be exercised only in express modes and to declare express rights retained by the people in their personal capacities. In addition to the first eight amendments – all of which dealt with specifically enumerated rights exempted from government interference or mandating express modes of procedure – two additional amendments were added for the purpose of obviating the "necessary and proper" clause as a basis of any implicative or constructive power whatsoever.

Madison expressed to the House the purpose and necessity of the Bill of Rights:

> "[T]he great mass of people who opposed [the Constitution]… disliked it because it did not contain effectual provisions against the encroachments of particular rights… The people of many states have thought it *necessary to raise barriers against all forms and departments of Government*,… [The Amendments] specify those rights which are retained… In other instances, they specify positive rights… *[T]he great object in view is to limit and qualify the power of Government, by excepting out of the grant of power those cases in which the Government ought not to act, or to act only in a particular mode*… [The Amendments are primarily] leveled against the Legislative [department]… [E]very Government should be disarmed of powers that trench upon these particular rights…"
> *ANNALS OF CONGRESS,* Vol. 1, p. 433-441, June 8, 1789 (Gales & Seaton 1834) (emphasis added).

Madison also warned that "the greatest danger" to the citizen's liberties and individual rights didn't reside in the government, but "lies rather in the abuse of the community… the body of the

people." *Id*. Democracy, in other words, posed the greatest danger and, it, too, needed to be guarded against.

An example of a case where the government is forbidden to act at all is in matters involving the right of individuals to keep and bear arms. Whereas, examples of mandatory procedural modes in acting are the issuance of warrants only upon sworn oath or affirmation (4th Amendment), absolute immunity from deprivation of life, liberty, or property except by due process of law (defined by the *common law*) (5th Amendment) and criminal prosecution in all cases only by trial by jury (defined by the *common law*) (6th Amendment).[29]

Madison explained how he devised the means to obviate powers by implication and construction to protect those retained rights too numerous to enumerate:

> "It has been objected also against a bill of rights, that, by enumerating particular exceptions to the grant of power, it would disparage those rights which were not placed in that enumeration; and it might follow by implication, that those rights which were not singled out, were intended to be assigned into the hands of the general government, and were consequently insecure…; but, I conceive, that [such power by implication] may be guarded against. I have attempted it, as gentlemen may see by turning to the last clause of the fourth resolution."
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> ***
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> "The exceptions here or elsewhere in the Constitution, made in favor of particular rights, shall not be so construed as to diminish the just importance of other rights retained by the people, or as to enlarge the powers delegated by the Constitution; but either as actual limitations of such powers, or as inserted merely for greater caution."
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> *ANNALS OF CONGRESS, supra*, Vol. 1, pp. 440, 436 (reading last clause of the 4th resolution).

After debate by both Houses the fourth resolution was returned in two separate amendments:

> The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.
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> ***
>
> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.
>
> *Amendments 9* and *10*.

It must be noted with emphasis that at no time did the "people" or the "States" give up their respective rights of self-defense or that of resisting tyranny. In fact, these rights were repeatedly

asserted not only to be *absolutely retained* by both the people and the States, but, more importantly, were universally acknowledged by all parties and factions *to be above and to supercede the laws of society*.[30]

Because this right is not given away by any grant in the Constitution and *cannot be taken away by the law of society*, being, as Hamilton emphasized, "paramount to all positive forms of government," it would have remained an absolute and inviolate right even had it not been doubly indemnified by the Second and Ninth Amendments. That matter being solved positively – having never been doubted by any but the rawest of tyrants – obviously the *means* to affect it must exist as well.[31]

The Second Amendment declares an individual right – as acknowledged by the *Emerson* rulings; but, it also prohibits *any* infringement of the right, which the 5th Circuit Judges refused to recognize. These judges have committed an overt act of treason and, worse, the majority admitted the Amendment, as written and intended, prohibited the Congress, the courts and the executive from interfering with Dr. Emerson's privately owned weapons in any case.

The Amendment says in the clearest language that the right "shall not be infringed." Federal judges, like all federal and state officers, are bound by oath to uphold and defend the Constitution as the Supreme Law of the Land. They are not bound by the opinions of the ignorant masses, treasonous opinions of other judges or traitors in Congress.

Attempts by the federal government to disarm the American people began in 1934 under Roosevelt and his New Deal. The Constitution was suspended by degrees and the object of the gun laws was never for the protection of society, but to make way – by gradualism, which the Founders defined as "encroachment" – for the New World Order.[32]

Dr. Emerson is now a felon. There is no defense to his innocent possession of his private property. The offense is *mala prohibita* and does not require an "evil intent." He is deprived of his liberty and his property. He is an outlaw – forever – because his wife was unfaithful.

But, Dr. Emerson got off lightly after all. Vicki and Sammy Weaver were killed because a federal agent procured the cutting of a shotgun barrel slightly less than 18 inches. And 86 men, women and children were burned to death at Waco by federal agents because David Koresh possessed a gun. Where did this treasonous insanity begin?

The 1934 National Firearms Act and the 1936 Federal Firearms Act – now culminated into the Gun Control Act of 1968 (the key word is "control") – began as an alleged "war on crime" and emergency legislation stemming from declared "emergencies" by FDR at the behest of his *Cultural*

Communist handlers. (We should always remember when looking at FDR and his New Deal that FDR considered himself Joseph Stalin's "best friend," and he was).

We are deeply into the abyss, but it will get much worse. The reason neither Congress nor the courts obey the Constitution is because it has been suspended and superseded, which seems to remain a secret only among conservatives.

The United States Senate has boldly announced the fact:

> "A majority of the people of the United States have lived all their lives under emergency rule. For 40 years, freedoms and governmental procedures guaranteed by the Constitution have, in varying degrees been abridged by laws brought into force by states of national emergency…"
> *United States Senate Report on the Emergency Powers Statutes*, No. 93-549 (November 1973).

The *Constitution* abridged by *laws?*

> "Since March 9, 1933, the United States has been in a state of declared national emergency…Under the powers delegated by these statutes [enacted pursuant to the declared emergencies], the President may: seize property; organize and control the means of production; seize and control all transportation and communication; regulate the operation of private enterprise; restrict travel; and, in a plethora of particular ways, control the lives of all American citizens…"
> *Senate Report, supra, Forward* to *Report*.

We have recently witnessed the birth of a new super-centralized national police system: *The Homeland Defense*. And emergency Presidential decrees followed by affirmation of Congress of enormous scope. (Wise men would do well to review FDR's first "One Hundred Days"). This, and such agencies as FEMA (the Federal Emergency Management Agency), are virtually the exact equivalent as England's notorious Riot Act, which was overturned as contrary to the English Constitution.[33]

The subject of executive fiat, legislative usurpation, standing armies and disarmament of the people by innovative means and claims of necessity was the central crux of the great debate of 1789, as contending factions were attempting to divide the spoils while simultaneously developing a Constitutional Republic. A police state was feared above all. Standing armies of civil patrols were considered the exact opposite of a free state. Even Hamilton, the most extreme of the centralized government advocates, loudly announced that universal sentiment of freemen:

> "The arbitrary and vexatious powers with which patrols are necessarily armed would be intolerable in a free country."
> *The FEDERALIST PAPERS*, *supra*, No. 12, p. 94.

And, of course, they are *not* tolerated in a free country. The age of free countries, as the Founders envisioned them, has obviously passed. Free countries depend upon freemen – a well regulated militia is *necessary* to the security of a free state. It is no small irony that the concept of armed policemen was abhorred by the generation that founded this country and drafted the Constitution and Bill of Rights. There was no such thing in this country as the office of policeman and it was wholly unknown to the English common law.[34]

James Madison denied a police power in the proposed federal government asserting that the executive power of the government was dependent for execution by the militia called out to enforce the laws and denying absolutely any power "in the Constitution to warrant the general government to make such an act" as the Riot Act.[35] The Constitution specifically provides for executive use of the militia to execute the laws of the United States.[36]

The modern American police officer has its roots in a phenomenon arising in the eastern seaboard cities caused by the influx of foreigners unaccustomed to freedom and personal responsibilities flocking to enjoy the opportunities of a country created by others without personal sacrifice or risk of their own. To their minds freedom was free. Crime, *naturally*, became rampant in those cities where liberty became license, as this new class of creature was devoid of that spirit of liberty and vigilance required to sustain a nation of freemen. The office of the policeman and its subsequent necessary informant system arose in proportion to the disappearing responsible, vigilant freeman – collectively, the conscience and guardian of the community.

Justice Story, part of that dying generation, noted the growing apathy and insinuated its course:

> "The right of the citizens to keep and bear arms has justly been considered, as the palladium of the liberties of a republic; since it offers a strong moral check against the usurpation and arbitrary power of rulers; and will generally, even if successful in the first instance, enable the people to resist, and triumph over them. And yet, though this truth would seem so clear, and the importance of a well regulated militia would seem so undeniable, it cannot be disguised, that *among the American people there is a growing indifference to any system of militia discipline*, and a strong disposition, from a sense of its

> burthens, to be rid of all regulations. How is it practicable to keep the people duly armed without some organization, it is difficult to see.
>
> *There is certainly no small danger, that indifference may lead to disgust, and disgust to contempt; and thus gradually undermine all of the protection intended by this clause of our national bill of rights."*[37]

Federal officers, namely U.S. Marshals, were given the statutory right to carry firearms as part of their office in 1875. Since then, standing armies of federal agents from a smorgasbord of agencies have been rising throughout the country with powers never dreamed of by the fiercest advocates for centralized government of the founding era. Dispensing with the *posse comitatus* and militia,[38] federal and state officers beholden to their superiors and the feared *espirit de corps* have replaced public arms in executing the law with that of the feared "armed patrols" since the close of the Reconstruction era.[39]

Public involvement in arrest and seizure has been superseded by non-public, pension-interested exclusivity and the results are obvious. Even elected local sheriffs are not responsive to the concerns of local constituents anymore – at least by and large. The abuse, cover-ups and injustice are standard procedure now.[40] Had the militia or *posse comitatus* been involved at Waco or Ruby Ridge, those tragedies would probably never occurred, or, certainly, the cover-ups would have failed. Rather than prosecuting the victims (the federal and state officers, clearly violating the Second Amendment), the assaults with the wholesale absence of lawful authority could have been prosecuted both criminally and civilly. As Hamilton so astutely observed, "usurpation" can only be frustrated by active participation of the citizens "provided the citizens understand their rights and are disposed to defend them."

Dr. Emerson, like the victims of Waco and Ruby Ridge, without the protections of an informed grand jury and in face of the prohibitions of the Second Amendment, is now a victim as well. Without violating any person or property and without a "crime" (in its historical sense) ever being committed, except by his adulterous wife, Dr. Emerson lost his liberty, his property, his right of self-defense and is lost to "We, the people" as a member of our militia.

The Fifth Circuit Court of Appeals, contrary to the hoopla being disseminated, deciding the right to keep and bear arms is a personal right of the individual citizen has, nevertheless, denied that its command "shall not be infringed" is the Supreme Law of the Land. This ruling is not a declaration of law, but an act of usurpation – a policy decision of those who have usurped power over this country. The *espirit de corps* at work undermining the Constitution.

It is consistent with the trend at large. America has passed its age of a free republic long ago. It has now apparently entered its age of Stalinism. Purges will come and the gulags are ready[41] and are, in fact, the primary growth industry in the United States today.

On the last day of the Federal Convention, September 17, 1787, Benjamin Franklin, having been nearly silent during the course of the drafting of the Constitution, acknowledged that the Constitution contained grave defects. Nevertheless, he agreed that a government was necessary and, therefore, agreed to keep his true "opinions I have of its errors" from the apprehensive public, as he was uncertain a better Constitution could be produced. He believed, he told his colleagues, that the government under this Constitution "is likely to be well administered for a course of years, and can only end in Despotism, as other forms have done before it, *when the people have become so corrupted as to need despotic Government, being incapable of any other.*"[42]

The wise old Sage simply placed at the end of the debate a symbolic exclamation mark of the truth of human history. This truth was emphasized repeatedly by the men engaged in that great endeavor – and emblazoned in history – that freemen *will* live in a free government, always armed, alert and vigilant; whereas, slaves *will* live under despotic government and grovel for security with thoughts and desires only of the moment.

The mask of our free government has been slowly, but perceptively, coming off. The Despot has arrived. The *Emerson* ruling has shown His face: citizens have a personal guaranteed constitutional right to keep and bear arms for self-defense and to protect against tyranny…except when the Despot says otherwise.

"Eternal vigilance is the price of liberty," our fathers warned us. Not heeding that warning we have lost what we deserved to lose. We are deserving of despotic government, being clearly "incapable of any other."

FOOTNOTES

1. *United States v. Emerson*, 2001 WL 1230757 (5th Cir. (Tex.)), ― F.3d ― (5th Cir. 2001), *reversing and remanding, United States v. Emerson*, 46 F. Supp. 2d 598 (N.D. Tex. 1999).

2. The federal commerce power is found in the Constitution at Article I, section 8, clause 3, which states: "The Congress shall have power…To regulate Commerce with foreign nations, and among the several States, and with the Indian Tribes." Commerce, at that time, was simply the business of buying goods in quantity for the express purpose of moving them to a market area where they were in demand and reselling them at a profit. *United States v. Lopez*, 514 US, 131 LEd2d 626, 655, 115 SCt ―, (1995) (Thomas, J., concurring) ("At the time the original Constitution was ratified, 'Commerce' consisted of selling, buying, and bartering, as well as transporting for those purposes. See 1 S. Johnson, A Dictionary of the English Language 361 (4th ed. 1773)…");

and see THE PRINCIPLES OF COMMERCE and COMMERCIAL LAW, Sir Geo. Stephen, London, 1853, pp. 2-10 ("Commerce" pertains to the *field of occupation* belonging to the "merchant," as opposed to mere "consumption" by persons whose intent is merely to "use" the article personally or privately; "commerce is usually defined to be the buying and selling of merchandise, either for ready money or on credit" and "practically consists in the purchase and sale of goods, and on payment for them, in the safe conveyance and delivery of them to the purchaser."; Commerce requires "yielding a profit on the sale, and to purchase other goods to the same extent, on such reasonable terms as may justify the expectation of a profit on their re-sale." The "object" of commerce is to *realize a profit*, and the "principle of commerce" is to *buy and sell again at a profit*; "Commerce is a science" belonging exclusively to the "merchant" and excludes the "consumer," which defines "all who buy for the purpose of actually using, or converting to use, the article bought."); *THE COMMERCE CLAUSE OF THE FEDERAL CONSTITUTION*, E.P. Prentice & J. Egan (Callaghan & Co., Chicago, 1898), p. 43 ("Commerce, then, involves the idea of carrying the commodity intended for exchange [for profit] to another place, where, as we say, the market is to be held, and the sale accomplished. Hence, without both transportation and liberty of sale, there can be no interstate commerce.") (quoting *Harvey v. Huffman*, Cir. Ct. Porter County, Ind., cited in 39 Fed. Rep. 646, 648; *United States v. Cassidy*, 67 Fed. Rep. 698, 705).

The Fifth Circuit panel in *Emerson* recognized that the Commerce Clause, as written and intended by the Founding Fathers, absolutely prohibited the statute in question, but chose to ignore the Constitution and uphold "prior precedent": "Even assuming, as we do, that the instant firearm traveled in interstate commerce after the September 1994 enactment of §922(g)(8), and although we are bound by our prior precedent, it nevertheless appears to us that the founding generation would have regarded as clearly illegitimate any construction of the Commerce Clause which allowed federal prohibition of mere passive, non-commercial, personal possession of a firearm acquired in accordance with federal (as well as state) law which thereafter always remained within the state in which it was acquired," *id*., 2001 WL 1230757, p. 42, note 8.

3. Prior to 1909, an adulteress such as Mrs. Emerson would have been convicted of her admitted crime and her testimony and allegations would have been of no effect in a court of law. Convicted felons and perjurers were not permitted to testify in those times. Additionally, Mrs. Emerson's companion in the crime would also have been convicted and the law would have protected and provided for Mr. Emerson, the victim of the sordid affair.

4. *United States v. Emerson*, 46 F.Supp. 2d 59 (N.D. Tex. 1999).

5. *United States v. Emerson*, 2001 WL 1230757, pp. 6-7 (listing organizations and attorneys joining).

6. Article VI, U.S. Constitution.

7. *United States v. Will*, 449 US 200, 216 note 19, 66 LEd 2d 392, 406 note 19, 101 SCt 471 (1980) (Federal Courts "have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the Constitution.") (emphasis omitted) (quoting Chief Justice Marshall in *Cohen v. Virginia*, 6 Wheat. 264, 404, 5 LEd 257 (1821)).

8. *DEBATES ON THE ADOPTION OF THE FEDERAL CONSTITUTION*, J. Elliot (1987 AYERS Publ. reprint of 1888 ed.), Vol. 3, p. 95 ("[T]he powers of the federal government are enumerated; it can only operate in certain cases; it has legislative powers on defined and limited objects, beyond which it cannot extend its jurisdiction.") (James Madison, member of the Federal Convention which drafted the Constitution, at the Virginia Convention for the ratification of the Constitution); *id*., Vol. 3, p. 464 ("[I]n the general Constitution, its powers are enumerated. Is it

not, then, fairly deducible, that it has no power but what is *expressly* given it? – for if its powers were to be general, an enumeration would be needless.") (emphasis added) (Gov. Edmund Randolph, member of the Federal Convention, at the Virginia Convention); *id*., Vol. 3, p. 553 ("Has the government of the United States power to make laws on every subject?... Can they go beyond delegated powers? If they were to make a law not warranted by any of the powers enumerated, it would be considered by the judges as an infringement of the Constitution which they are to guard. They would not consider such a law as coming under their jurisdiction. They would declare it void.") (John Marshall, later Chief Justice of the Supreme Court, at the Virginia Convention); *id*., Vol.4 , pp. 259-260 ("The distinction which has been taken between the nature of the federal and state government appear to be conclusive – that in the former, no power could be executed, or assumed, but such as were *expressly delegated*…") (emphasis added) (Charles Pinckney, member of the Federal Convention and author of the original draft that became the Constitution, at the South Carolina Convention); *id*., Vol. 3, p. 451 ("[The federal government] cannot legislate in any case but those particularly enumerated.") (George Nicholas at the Virginia Convention); *id*., Vol. 2, p. 481 ("Whoever view the matter in a true light, will see that the powers are as minutely enumerated and defined as was possible,…") (James Wilson at the Pennsylvania Convention); id., Vol. 2, p. 540 ("[F]or the powers of Congress, being derived from the people in the mode pointed out by this Constitution, and being therein enumerated and *positively* granted, can be no other than this positive grant conveys.") (emphasis in original) (Judge M'Kean at the Pennsylvania Convention).

9. Among the numerous provisions of the proposed Constitution that gave rise to fears of centralized government and despotism, the Necessary and Proper Clause, if not the most predominant (which it appears to be), was at least of greatest concern. Other matters of major concern were preservation of the *common law* trial by jury, criminal jurisdiction of the federal government and, of course, the taxing power – all of which were considered bulwarks of liberty (trial by jury) or instruments of tyranny (criminal prosecution and taxation). And fear of standing armies with which tyranny can be executed was of paramount concern.

10. *United States v. Cruikshank,* 92 US 542, 553, 23 LEd 588 (1875); *see also Bliss v. Commonwealth*, 2 Litt. (Ky.) 90, 92, 13 Am. Dec. 251 (1822) ("The right existed at the adoption of the constitution;… and in fact consisted in nothing else but in the liberty of the citizens to bear arms. Diminish that liberty, therefore, and you necessarily restrain the right…").

11. *E.g. Commentaries on the Laws of England*, Wm. Blackstone (1755-1765), Book I, ch. I, p. 130 (person's right "to protect himself" is "a natural inherent right"); *id*., Book III, Ch. I, pp. 3-4 ("The right of self-defense" includes "the mutual and reciprocal defense of such as stand in the relations of husband and wife, parent and child, master and servant…"); *A TREATISE OF THE PLEAS OF THE CROWN*, Hawkins, Book I , ch. 10, § 14 (8th ed. 1824) ("the killing of rioters by any private persons, who cannot otherwise suppress them or defend themselves from them [is justified], inasmuch as every private person seems to be authorized by law to arm himself for the purpose aforesaid."); *United States v. Emerson*, 46 F.Supp 2d 598, 602 (N.D. Tex. 1999) (English law since early Middle Ages compelled the manhood of the communities to "pursu[e] criminals and guard[] their villages") (citing authorities); *Commentaries, supra*, Book I, ch. XIII, p. 411 (compelling men to be armed "in order to keep the peace").

12. *Commentaries, supra*, Book I, ch. I, p. 129 ("And these may be reduced to three principal or primary articles; the right of personal security, the right of personal liberty, and the right of private property…the preservation of these, inviolate, may justly be said to include the preservation of our civil immunities in their largest and most extensive sense.").

13. 46 F. Supp. 2d 598, 603 (N.D. Tex. 1999) (emphasis added).

14. *THE GUN IN AMERICA*, L. Kennett & J. L. Anderson, p. 38 (Greenwood Press 1975) ("American colonists" in preparation to use extreme force against agents of the British government "secured the most modern armament from Europe, and then creatively improved it."); *id*., p. 62 (War preparation by the colonists included stock-piling of powder and *private* purchases of canons) (citing *THE FIRST YEAR OF THE AMERICAN REVOLUTION*, pp. 37-41, French, and *THE FOUNDING OF A NATION*, pp. 536-541, Merrill Jensen (New York, Oxford Univ. Press 1968)); *HISTORY OF THE SIEGE OF BOSTON*, p. 95, R. Frothingham (6th ed. 1903) (listing privately owned weapons involved in the colonial resistance confiscated by the British government as extensive numbers of "firearms" [muskets], "pistols," "bayonets" and "blunderbusses," all of which were weapons stock-piled for the purpose of opposing government agents); *GENERAL GAGE IN AMERICA*, p. 225, J. Alden (1948) (same); *WEAPONS OF THE AMERICAN REVOLUTION*, p. 150, G. Neumann (1967) ("…pistols were common weapons" of the colonists during the war); *MEMOIRS OF THE WAR*, p. 110, H. Lee (1869) ("Fowling pieces," which have evolved into the modern shotgun, were typical weapons of the Revolution). Blunderbusses, incidentally, were short-barreled short-range shotguns of which the barrel expanded rapidly in diameter for the purpose of spreading the discharged shot widely. Its purpose was virtually the same as the modern riot-shotgun.

15. *WRITINGS*, S. Adams, Vol. III, pp. 162-163, 172 (1906) ("[V]iolent Attacks of Depotism" was simply a reference to British government attempts to collect taxes or to punish the colonists for their resistance to various British mandates at that time. Fortunately, colonists heeded the call and armed up, although the government had secured laws forbidding such acts, and they defied the "laws" – simply refusing to acknowledge them as law, but rather as further acts of *usurpation*, *despotism* and *tyranny*.

16. The *DECLARATION OF INDEPENDENCE* cited many of the usurpatious acts of the British government and referred to the many attempts by the colonists to peaceably redress their grievances over time to no avail.

17. This is, of course, somewhat idealistic. This spirit of freedom was spreading through the colonies and in some quarters was hyperactive. Fighting alongside the freemen were hordes of criminals who had fled England and the European continent and they were literally, more or less, fighting for their lives. Their ideal of freedom was considerably different than the typical settler. This is a chapter of American history often deliberately omitted. They, too, however, affected the politics which developed later. This *type* of creature infested the cities of America, particularly the Northern cities, where the "land of opportunity" meant, to them, the exploitation of vice. They were neither settlers nor laborers, but hustlers. This element was seen again during the Civil War, following Sherman's armies through Georgia. Their sole function was to loot, burn, rape and murder dispossessed Southern civilians – virtually all women and children. They were known as the "Bummers" and Northern newspapers openly urged them to rape, loot and burn. Upon triumph of the Union, the "Bummers" were marched through Washington, D.C., as *heroes*, receiving honors above even Union soldiers and officers. Europe was shocked. The scum of humanity had become an American ideal.

18. The Treaty of Peace was negotiated by John Jay. It stipulated extensive payments to be made to England by the states as reparations for the war and laid heavy debt upon them. It was perceived by the Americans as treason; after all, it was their view that England, not the colonies, forced the war by its usurpations. The typical American, however, had no comprehension of the huge debt they had accrued from European financiers to enable victory and their involvement and interests were to surface later playing a paramount role in the creation of the Constitution, which replaced the Articles of Confederation.

19. George Washington did virtually nothing during the creation phase of the Constitution, except to sit as the nominal head of the Convention. Meanwhile, the public newspapers, while keeping the public hopelessly ignorant of enormous powers being conjured up in the new government, reassured them that their beloved Revolutionary Hero was overseeing their interests. Patriots, like Luther Martin and Judge Yates left the Convention and reported to their home states – Martin to Maryland and Yates to New York – that a "conspiracy" of the most consuming sort was underway to strip the people of their liberties, the states of their sovereignty and to bury America in debt. *See e.g. DEBATES, supra*, Vol. 1, pp. 344-389 (Luther Martin's letter and Address to the Maryland Legislature); *id*., pp. 480-482 (Judge Yates' and John Lansing's Letter to the Governor of New York).

20. *DEBATES, supra*, Vol. 3, p. 108 ("A government of this kind may extend to all the western world; nay, I may say, *ad infinitum*.") (Mr.Corbin at the Virginia Convention referring to the government under the proposed Constitution); *id*., Vol. 3, pp. 566-567 ("This may form a *new*, American law of nations. Whence the idea could have originated, I cannot determine, unless from the idea that predominated in the time of Henry IV and Queen Elizabeth. They took it into their heads to consolidate all the states in the world into one great political body. Many ridiculous projects were imagined to reduce that absurd idea into practice; but they were all given up at last.") (Mr. Grayson at the Virginia Convention seeing the proposed powers of the new government at the least "absurd" and generally destructive of the people's rights); *id*., Vol. 2, p. 209 (Insisting that it is the "received opinion" that the "happiness of nations…depends on peace," which was now proposed "on the basis of a general union of nations," the cornerstone of which would be the Constitution under debate. "It has pleased Heaven to afford the United States means for the attainment of this great object, which it has withheld from other nations.") (Mr. Livingstone at the New York Convention); *id*., Vol. 2, p. 225 ("We may, on one side compare the scheme [proposed under the new Constitution] *to golden images, with feet part of iron and part of clay*; and on the other, *to a beast dreadful and terrible, and strong exceedingly, having great iron teeth, - which devours, breaks in pieces, and stamps the residue with his feet*; and after all, said he, we shall find that both of these allusions are taken from the same vision; and their true meaning must be discovered by somber reasoning.") (Mr. Smith at the New York Convention) (emphasis is in original).

21. *DEBATES, supra*, Vol. 3, p. 365 ("The present government has much higher powers…That paper [Articles of Confederation] contains much higher powers.") (Gov. Randolph at the Virginia Convention defending Constitution against accusations that proposed government would usurp power over navigation within state borders and jeopardize state commerce).

22. Between the apparently unlimited powers of taxation and to raise standing armies it was perceived that the most audacious plans were being laid to enslave the American people – plans, which some clearly foresaw, as extending around the globe. *See e.g. footnote 20, supra. DEBATES, supra*, Vol. 1, p. 355 ("[W]e considered the system proposed to be the most complete, most abject system of slavery that the wit of man ever devised, under the pretense of forming a government for free states…") (Luther Martin, delegate to the Federal Convention, in his letter to the Maryland legislature reporting the contents and intent of the conspiracy behind the Constitution); *id*., Vol., p. 443 (concern for officials elected and appointed to federal offices developing an "*espirit de corps*" and betraying constituents) (Messrs. Pinckney and Sherman at the Federal Convention – Judge Yates' minutes of the proceedings); *id*., Vol. 2, p. 43 ("A capitation tax is abhorrent to the feelings of human nature…" trusting that Congress would *never* attempt such a despicable act) (Judge Dana at the Massachusetts Convention); *id*., Vol. 2, pp. 60-61 ("[I]f Congress has the power to lay taxes, and, in cases of negligence or non-compliance, can send a power to

collect them,…the idea of [state] sovereignty was destroyed."; "[N]o more power could be given to a despot, than to give up the purse-strings of the people.") (Messrs. Bodman and Singletary at the Massachusetts Convention); *id*., Vol. 2, p. 62 (Under the new Constitution "our federal rulers will be masters, and not servants…[S]hould the Congress be chosen of designing and interested men, they can perpetrate their existence, secure the resources of war, and the people will have nothing left to defend themselves with.") (General Thompson at the Massachusetts Convention) *id*., Vol. 2, pp. 73-74 ("It is a power, sir, to burden us with a standing army of ravenous [tax] collectors, - harpies, perhaps, from another state, but who, however, were never known to have bowels for any purpose, but to fatten on the life-blood of the people. In an age or two, this will be the case; and when the Congress shall become tyrannical, these vultures, their servants, will be tyrants of the village, by whose presence all freedoms of speech and action will be taken away.") (Mr. Symmes at the Massachusetts Convention); *id*., Vol. 2, p. 80 ("Congress will have power to keep standing armies…we don't want standing armies…It is said we owe money: no matter if we do; our safety lies in not paying it…Don't let us go too fast…Some say, that those we owe will fall upon us …Why all this racket?...Great Britain has found out the secret to pick the subject's pockets, without their knowing it: that is the very thing Congress is after…But where is the bill of rights which shall check the power of this Congress; which shall say, *Thus far shall ye come, and no farther*. The safety of the people depends on a bill of rights… [I]f this Constitution is got down, we shall alter the system entirely, and have no checks upon Congress.") (General Thompson at the Massachusetts Convention); *id*., Vol. 2, pp. 101-102 (Mr. Singletary, after noting he had been engaged in the Revolution and a member of the court of Massachusetts since 1775, assured the Convention that if the proposed Constitution had been offered "in that day, it would have been thrown away at once. It would not have been looked at…Does [this Constitution] not take away all we have – all our property? [Referring to the taxing power]…These lawyers, and men of learning, and moneyed men, talk so finely, and gloss over matters so smoothly, to make us poor illiterate people swallow down the pill, expect to get into Congress themselves; they expect to be the managers of this Constitution, and get all the power and all the money into their own hands, and then they will swallow up all us little folks, like the great *Leviathan*…"); *id*., Vol. 2, p. 222 ("A body of federal officers in the heart of a state, acting in direct opposition to the declared sense of the [state] legislature!") (R.R. Livingston, Chancellor of New York at the New York Convention, insisting that such federal officers in the state "would be its own destruction"); *id*., Vol. 2, pp. 256, 268 ("If all we hear be true, this [proposed] government is really a very bad one," admitting that if the powers under the new Constitution permitted the federal government "to new-model the internal policy of any state;…to alter, or abrogate…its civil and criminal institutions;…to penetrate the recesses of domestic life, and control…the private conduct of individuals,…" there would be "force in the objection" to it, as asserted by its opponents) (Alexander Hamilton at the New York Convention); *id*., Vol. 2, pp. 338-340 (Noting that "arms" are the "*ultima ratio*" [final decision-maker] to which the "states [must] recur, in order to secure their rights," but over time by taxation and standing armies the states would be rendered helpless and the people despoiled of their liberties) (Mr. Williams at the New York Convention); *id*., Vol. 3, p. 176 ("I look upon that paper [Constitution] as the most fatal plan that could possibly be conceived to enslave a free people.") (Patrick Henry at the Virginia Convention).

23. The thought that *democracy* might prevail under the new system struck terror in the hearts of both federalists and anti-federalists. There was very little disagreement on this point **–** *democracy* was feared more than taxation and standing armies and was viewed as government-by-chaos. The use of the phrase "We, the people" was merely a play for pacification of the dreaded "herd," which the people were sometimes referred to privately and even occasionally in public. *See e.g.*

DEBATES, supra, Vol. 3, p. 148 ("The style of the government (We, the people) was introduced perhaps to recommend it to the people at large; to those citizens who are to be leveled and degraded to the lowest degree; who are likened to a *herd*; and who, by the operation of this blessed system, are to be transformed from respectable, independent citizens, to abject, dependent subjects or slaves. The honorable gentleman [Gov. Randolph] has anticipated what we are to be reduced to, by degradingly assimilating our citizens to a herd.") (Patrick Henry at the Virginia Convention referencing a comment by a leading federalist); *id*., Vol. 2, p. 10 ("Faction and enthusiasm are the instruments by which popular governments are destroyed…The people…nourish factions in their bosoms, which will subsist so long as abusing their honest credulity shall be the means of acquiring power. A democracy is a volcano, which conceals the fiery materials of its own destruction. These will produce an eruption.") (Mr. Ames at the Massachusetts Convention); *id*., Vol. 2, p. 31 ("But suppose it should so happen, that the administrators of this Constitution should be preferable to the corrupt mass of people, in point of manners, morals, and rectitude; power will give a keen edge to the principles [of corruption] I have mentioned.") (Mr. Turner at the Massachusetts Convention); *id*., Vol. 2, p. 67 ("My concern is for the majesty of the people. If there is no virtue among them, what will the Congress do? If they had the meekness of Moses, the patience of Job, and the wisdom of Solomon, and the people were determined to be slaves, sir, could the Congress prevent them?...Sir, I shall have nothing to do with this [proposed] government.") (Mr. Phillips at the Massachusetts Convention fearing both the potentially abusive powers of the proposed Constitution and that of the increasingly virtueless masses).

24. Hamilton was no federalist. An extraordinarily intelligent and ambitious man, who, during the Revolution, was *aid de camp* to General Washington and, following the Revolution, was an unofficial liaison and representative of powerful money lenders of Europe that had financed the Revolution. Hamilton shocked the delegates at the Federal Convention when he spoke openly admitting his object in the formation of a new government was a completely centralized national government, which would obliterate the sovereign states entirely. *See e.g. THE ANTI-FEDERALIST PAPERS and the CONSTITUTIONAL CONVENTION DEBATES*, Ralph Ketcham, Mentor Publ. 1986, pp.70-79. Realizing that he had inadvertently revealed the plan of his backers through an unintentional emotional outburst, the following day he apologized stating he was misunderstood.

Under the new Government, Hamilton was appointed Secretary of the Treasury and supported the Bank of the United States, which his secret backers were demanding. He was also an advocate – the primary one in fact – of a huge "national debt." He attempted to create government owned monopolies of mining and other endeavors but was unable to overcome almost universal opposition. Hamilton's plans, although groundwork was laid to implement them periodically by his compatriots such as Chief Justice Marshall, who viewed the United States as an "empire" rather than a "republic," remained largely dormant until FDR was installed as the international banker's governor over their American interests in 1933. The Tennessee Valley Authority (TVA) is just one of the numerous examples of Roosevelt's implementation of the dormant Hamiltonian plan.

25. *See footnote 7, supra*.

26. *Compare Emerson, supra*, 2001 WL 1230757, p. 14 quoting *United States v. Miller*, 307 US 174, 59 SCt 816, 819, 83 LEd 1206 (1939), noting that the 2nd Amendment right to keep and bear arms pertained exclusively to "the militia" for the purpose of "acting *in concert*," *with* Hamilton's prescription against tyranny by "citizens…rush[ing] …to arms, *without concert*" – *i.e.*, individually.

27. *DEBATES, supra*, Vol. 3, p. 422 (John Marshall at the Virginia Convention noting that fear of federal government failing or refusing to arm the militia was chimerical because the state itself could "import" the necessary arms); *id*., Vol. 3, p. 646 (Mr. Johnson at the Virginia Convention noting that under the new Constitution "The people are not to be disarmed of their weapons. They

are left in full possession of them."); *id*., Vol. 2, p. 97 (Mr. Sedgewick at the Massachusetts Convention asserting it "a chimerical idea to suppose that a country like this could ever be enslaved" because the Americans "know how to prize liberty, and …have arms in their hands" with which to enforce it). These, of course, were all *federalists* attempting to ensure the opposition that the new government posed no threat to their liberties.

28. Article V of the Constitution provides that any amendments to the Constitution "shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified…"

Article VI of the Constitution provides the same to be "the Supreme Law of the Land" binding all legislative, judicial and executive officers of the federal and state governments to obey them unequivocally.

29. These common law modes of procedure were the basis of the commonly heralded principle "a nation of law." The movement of official action against the person, whether against his "life, liberty, or property," was required to be exhibited for public and official inspection at every stage of the action. These lawful requisites were acknowledged and followed in the United States strictly until the Military occupation of the South and the Reconstruction era. Trial by jury took a major blow in 1895 in the case of *Sparf v. United States*, 156 US 51, 39 LEd 343, where the Supreme Court eliminated the jury's power to decide the law – beginning the process of rendering juries mere rubber-stamps of federal judges. Trial by jury, as a jurisdictional barrier to federal action, was completely undermined in 1930 with the case of *Patton v. United States*, 281 US 276, 74 LEd 854, where the Supreme Court, held that the mandates of the Constitution, Article III, sec. 2, clause 3, was no longer a jurisdictional requisite, redefining the meaning of jury at the common law. The New Deal era Supreme Court obviated "due process of law" by dividing and conquering it – creating a "substantive due process" and a "procedural due process" out of the mandate. Under the common law due process, process and procedure were bound up in the same phenomena. It was all procedural. And it was strict. Without the requisite process complied with strictly at every stage of the proceeding, the proceeding itself was unlawful and void and all officers proceeding outside its perimeters were guilty, as a matter of law, of trespass.

The Bill of Rights were created as jurisdictional bars against government action in all cases whether by prescribing the mode or means of action or by prohibiting action regarding express subject matter altogether. *See e.g. Johnson v. Zerbst*, 304 US 458, 82 LEd 1461 (1938) (The Amendments were submitted by the first Congress convened under that Constitution "*as essential barriers *** [They] withhold[] from Federal Courts…power and authority*** [C]ompliance with th[ese] constitutional mandate[s] is an essential jurisdictional prerequisite to a Federal court's authority to deprive an accused of his life or liberty.*** [T]he[se]…Amendment[s] stand [] as a jurisdicitonal bar…If the requirement of [such]Amendment is not complied with, the court no longer has jurisdiction to proceed*.") (emphasis added) (construing Bill of Rights, generally, and 6th Amendment in particular); *Weeks v. United States*, 232 US 382, 58 LEd 652 (1913)("[T]he duty of giving [the Amendments] force and effect is obligatory on all entrusted under the Federal system with the enforcement of the laws. *** The United States Marshal could only have invaded… the accused *when armed with a warrant issued as required by the Constitution, upon sworn information*… Instead, he acted *without sanction of law*… Under such circumstances, *without sworn information…not even an order of court would have justified such procedure*…To sanction such proceedings would be to affirm by judicial decision a manifest neglect, if not an open defiance, of the prohibitions of the Constitution…") (emphasis added) (construing 4th Amendment); *Go-Bart Importing Co., v. United States*, 282 US 344, 75 LEd 374 (1931) (execution of warrant issued upon unsworn facts is a "lawless invasion" and non-sanctionable) (4th Amendment); *Boyd v. United States*, 116 US 616, 29 LEd 746 (1886) (If officer claiming right to seize fails "to show the law by

which th[e] seizure is warranted" he has committed a trespass as a matter of law – to "show the law" means to require positive proof that every requisite process was complied with strictly by record evidence (4th & 5th Amendments).

30. *See e.g. The FEDERALIST PAPERS, supra*, No. 28 ("that original right of self-defense…is paramount to all positive forms of government") (A. Hamilton); *id*., No., 46 (Madison concurring); *and see COMMENTARIES ON THE LAWS OF ENGLAND*, Wm. Blackstone, *supra*, Book III, ch. I, pp. 3-4 ("self-defense…is justly called the primary law of nature, so it is not, neither can it be…taken away by the law of society.").

31. It must be remembered that the *object* of the right to keep and bear arms is to defend against government usurpation. The very concept of *liberty* (not to be confused with license) depends upon perpetual fear in government agents. *See e.g. Alford v. The State*, 8 Tex. App. 545, 563 (1880) ("It may be safely said that to a just and reasonable extent *the right of resistance to illegal official action is essential, not merely to all free government, but to any government whatever*. Even in despotic Rome this right was repeatedly and unreservedly recognized, and if there was no jurisdiction and authority in the officer, then the terse command issued, 'vim vi repellere licet' [it is lawful to repel force by force]…"); *THE SPIRIT OF LAWS*, Montesqieu, Vol. 2, p. 60 ("It is unreasonable…to oblige a man not to attempt the defense of his own life.") (T. Nugent translation 1899); *SECOND TREATISE ON CIVIL GOVERNMENT*, John Locke, p. 195 ("Self-defense is a part of the law of nature; nor can it be denied the community.") (Chicago 1955); *OF THE NATURAL RIGHTS OF INDIVIUALS*, Vol. 2 of *THE WORKS OF JAMES WILSON*, J. Wilson (J.D. Andrews ed. 1896), p. 355 ("The defense of one's self, justly called the primary law of nature, is not nor can it be abridged by any regulation of municipal law.") (Wilson was a leading *federalist* and a member of both the Federal and Pennsylvania Conventions); *A FEW LECTURES ON NATURAL LAW*, St. Geo. Tucker (1844), p.95 ("[A]s the law of nature allows us to defend ourselves, and imposes no limit upon the right, the only limit we can impose is the necessity of the case. Whatever means are necessary must be lawful; for the rule is general, that where a right is absolutely given, the means of exercising it must follow."); *COMMENTARIES ON THE LAW OF VIRGINIA*, Henry St. Geo. Tucker (1831), p. 43 ("The right of bearing arms – …is particularly enjoyed by every citizen, and is among his most valuable privileges, *since it furnishes the means of resisting, as freemen ought, the inroads of usurpation*.") (emphasis added); *THE RIGHTS OF AN AMERICAN CITIZEN*, B. Oliver (1832), p. 40 ("Of these rights which are usually retained in organized society…[t]he first and most important of these rights, is that of self-defense."); *CONSTITUTION OF THE UNITED STATES*, J. Tucker (1899), Vol. II, p. 671 (The 2nd Amendment "prohibition indicates that the security of liberty against tyrannical tendency of government is *only* to be found in the right of the people to keep and bear arms in resisting the wrongs of government.") (emphasis added); *United States v. Emerson, supra*, 2001 WL 1230757, p. 30 ("'The militia is the natural defense of a free country against …domestic usurpations of power by rulers.'") (quoting Justice Story, *COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES*, pp. 708-709, noting also the right is the very "palladium" of liberty).

32. During the debates over the National Firearms Act of 1934, Congressman McClintic asked U.S. Attorney General Homer S. Cummings his official opinion of a provision to require registration of firearms. Cummings replied: "I am afraid it would be unconstitutional." Congressman Lewis inquired how the proposed act "escaped that provision of the Constitution," referring to the 2nd Amendment. The AG replied: "Oh, we do not attempt to escape it. We are dealing with another power, namely the power of taxation, and of regulation under the interstate commerce clause. You see, if we made a statute absolutely forbidding any human being to have a machine gun, you might say there is some constitutional question involved. But when you say 'We

will tax the machine gun' and when you say that 'the absence of a license showing payment of the tax has been made indicates that a crime has been perpetrated,' you are easily within the law." *HEARINGS BEFORE THE COMMITTEE ON WAYS AND MEANS*, H. of Rep., on *NATIONAL FIREARMS ACT*, H.R. 9066, April 16, 18 and May 14, 15 and 16, 1934, pp. 13, 19 (G.P.O. Washington 1934). The AG's position of circumventing the prohibitions of the Constitution by doing indirectly that which is directly forbidden was the *modus operandi* of FDR's communist administration. *See e.g. THE WISEMEN*, W. Isaacon & E. Thomas (Touchstone Pub. 1988) ("[Dean Acheson] drafted an opinion telling Roosevelt what the law forbade him to do; Roosevelt responded, at Acheson's annoyance, that *a lawyer's job was to find ways to circumvent such laws*.") (emphasis added). Regarding the NFA, Congressman Woodruff queried Joseph B. Keenan Assistant AG: "As a matter of fact, the purpose of taxing is for control only. That is the primary purpose; that is the medium through which we hope, constitutionally, to take charge…is it not?" Keenan answered: "That question is asked directly, and I have to answer frankly; yes." *HEARINGS, supra*, p. 91. It was boldly admitted that the object of the act was to register and control all firearms, eventually, and over time to fingerprint all Americans. J. Weston Allen, Chairman of the National Crime Commission, told the Committee in an obvious state of ecstacy: "[E]ven if you cannot prove [a citizen] has committed an act of violence, if he owns a gun [forbidden under the terms of the tax act] you can put him away for 5 years, and unless he has a wooden pistol, he will not make trouble for 5 years." *Id.*, p. 105.

Orwellian "double speak" and Rooseveltian "law twisting" characterized the proponents of the act (inherent in all New Deal legislation). The Department of Justice and virtually all congressmen freely admitted they were doing indirectly through the tax/interstate commerce power the very thing they were prohibited from doing directly by the 2nd Amendment. The prohibition, however, is absolute. It removes the subject **–** *i.e.*, armed citizens – from Congress' grants of power altogether. It does not suggest that it "shall not be infringed" except through taxation and commercial regulation. If it did it would be a meaningless amendment.

As Justice Marshal noted in *M'Cullah v. Maryland*, 17 US (4 Wheat.) 316, 4 LEd 579 (1819), "The power to tax is the power to destroy." The power to tax firearm possession is its destruction. The right of self-defense – the "primary law of nature, "the " palladium of liberty," recognized as "paramount to all positive forms of government – depends, since 1934, solely on the whims of Congress. Imagine that, a tax on the right of self-defense.

33. See St. Geo. Tucker's 1803 edition of *Blackstone's Commentaries*, Vol. V [Book IV], pp. 142-143 and particularly the comments at pp. 440-441. Blackstone, himself, notes the *illusion* of greater freedoms and protections since the Revolution of 1688: "Yet, though these provisions have in *appearance* and nominally reduced the strength of the executive power to a much lower ebb than in the preceding period, if, on the other hand, we throw into the opposite scale…the vast acquisition of force, arising from the riot act and the annual expedience of a standing army, and the vast acquisition of personal attachment, arising from the magnitude of the national debt and the manner of levying those yearly millions that are appropriated to pay the interest, we shall find that the crown has, gradually and imperceptibly, gained almost as much in influence as it has apparently list in prerogative." Tucker notes the danger of the Riot Act and it is easy to see that the emergency proclamation/executive order system established under Abraham Lincoln, made virtually perpetual by the War Powers Act of 1917, perfected by FDR under the New Deal and recently expanded by President Bush with concurrence of Congress – finds its proto-type in the infamous Riot Act.

34. *E.g. Palmer v. Hall*, 380 F. Supp. 120, 124 (D.C. Ga. 1974) ("The office of policeman…was unknown to the common law and purely a statutory creation. (citation omitted).

35. *DEBATES, supra,* Vol. 3, p. 414.

36. Article I, sec. 8, cl. 15 (Congress has the power… "To provide for a calling forth the Militia to execute the Laws of the Union…"). The duty to execute the federal laws is deposited in the President, Article II, sec. 3 (the President "shall take care that the Laws be faithfully executed…"), but the means are left to Congress and are limited.

37. *COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES*, J. Story (1833 ed.), pp. 708-709. The term "well regulated" militia simply meant the people "trained to arms" and disciplined in their use.

38. The only noted difference between *posse comitatus* and militia was that the posse was the armed manhood of the county and the militia was the armed manhood of the community in its widest sense. Under the *common law*, derived from the ancient Germans and brought to England with the Saxons, there was no difference. Both were Latin applications (Latin being the official language of the time) to the same German tradition. *See e.g. DEBATES, supra*, Vol. 3, p. 384 (discussing the boundary differences attributed to the terms by Messrs. Madison and Clay at the Virginia Convention); *compare Blackstone's Commentaries*, St. George Tucker, *supra*, Vol. 1, pp. 116-117 and Vol. 2, pp. 343, 408-409 (including notes)(explaining history of *posse comitatus* and militia).

39. *E.g. Tennessee v. Gardner*, 471 US 1, 15, 85 LEd 2d 1, 12, 105 SCt 1694 (1985) ("Handguns were not carried by police officers until the latter half of the last century.") (citing L. Kennett & J. Anderson, *The Gun in America*, pp. 150-151).

40. It has been widely admitted by the leading Chiefs of Police of America's largest cities that perjury by officers and subornation of perjury by prosecutors and investigators is a staple of modern American criminal justice. Without citizen involvement there is no remedy to this natural phenomenon. The pressure by the system in obtaining convictions – false evidence that the system works – has resulted in conviction by perjury and, in many cases, conviction of wholly fabricated crimes. Modern juries **–** both grand and petit – are members of the class of apathetic Americans, who are both ignorant of their duties and who sit as rubber-stamps of modern tyranny. The jury system was designed – and preserved by the Constitution – to protect citizens from tyranny. With the jury system remaining as a mere form without substance, and *habeas corpus* now defunct with application of federal procedural and evidentiary rules combined with the expansive borders of the *harmless error rule* (Fed. Rule of Proc. 52(a)), and the admitted abridgement of constitutional rights of American citizens per "Emergency Rule," the true "Palladium of Liberty" is more essential than ever. *See e.g. Federal Grand Jury Reform Report & 'Bill of Rights,'* Press Release 05/18/00, by National Association of Criminal Defense Lawyers (NACDL), http.//www.criminaljustice.org/public.nsf/freeform/grandjuryreform?OpenDocument, 21 pages with footnotes, *Report of the Committee to Reform the Grand Jury* (noting the federal grand jury "is today a captive of federal prosecutors" and "wholly fails to protect ordinary American citizens"; it is a "dangerous prosecutorial rubber stamp"; originally designed to "protect the individual from unfounded accusations…in the subsequent 200 years, in the federal system…the institution is almost precisely the opposite of what the Founding Fathers intended."; "'[Some federal prosecutions are] not just wrong, but willfully wrong, frivolously wrong…[Federal prosecutors] suborn perjury.'" (quoting Rep. Henry Hyde, Rep. Ill.); "the grand jury…has long ceased to perform its historic function as an independent entity acting as a shield to safeguard the citizenry" against tyranny); *see also e.g. United States v. Balano*, 618 F.2d 624, 627 n. 5 (10th Cir. 1980) (Circuit Judge McKay) ("[W]e should recognize that grand juries have largely lost their function as protectors of individual rights and have become agents of the prosecution.") (citation omitted).

41. *Corrections Today* (a prison management magazine for corrections officials), December 1999 article entitled *W2K: A challenge of Being a Warden of the New Millennium* by Gary I.

Dennis, deputy commissioner of the Kentucky Department of Corrections and a management and training consultant for the American Correctional Association), p. 80 ("The challenges of the new millennium are great for those who must manage this *vast American gulag* in the turbulent environment of modern society."). For those who don't know the meaning of "gulag," see, for example, *Webster's New Collegiate Dictionary*, "the penal system of the U.S.S.R. consisting of a network of labor camps; … LABOR CAMPS".

42. *The ANTI-FEDERALIST PAPERS and the CONSTITUTIONAL CONVENTION DEBATES*, *supra*, R. Ketcham, pp. 176-177 (emphasis added).