

## FEDERAL GUN LAW

This paper will focus on the fact that our Dept. of Justice and B.A.T.F. (Bureau of Alcohol Tobacco and Firearms), are operating under the "color of law" and systematically denying We the People of our right to the "Due Process of the Law". Our prisons are filled with our citizens to the point that the "land of the free" now has the highest prisoner per capita rate in the world.

**Color of Law:** The appearance, without the substance, of a legal right. An action done with the apparent authority of law but actually in contravention of law.  
– Law Dictionary, 4<sup>th</sup> Ed.,  
Stephen H. Gifis

Common Law crime, which requires a victim with injuries or damages, has not produced enough business for our criminal justice system. By using statutory law and hiding the necessity for implementing regulations, this system has been able to increase it's number of customers by more than eight times, without there being any increase in crime, as there are no additional victims. (Other than the persons being prosecuted under the color of law).

The following was learned from a true story of an arrest and prosecution under the U.S. Criminal Code Title 18 §922. We will use this case as an example, but it is typical of many thousands of cases involving American Citizens. These principles apply to all Federal Gun Law cases. The principle of need for regulation applies to all statutory law, State or Federal.

The many cases mentioned above were all prosecuted under Statute 922 of the Gun Control Act. §922 Unlawful Acts. 922(g) reads as follows: "It shall be unlawful for any person<sup>1</sup> [ who is an ex-convict, drug addict, illegal alien, etc.]... to ship or transport 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."

Words having universal scope, such as... "**every person** who shall monopolize," etc. will be taken, as a matter of course, to mean only everyone subject to such legislation, not all that the legislator subsequently may be able to catch. - *American Banana Co. v United Fruit Co.*, 213 U.S. 347, Justice Oliver Wendell Holmes of Our US Supreme Court.

It is an operation of law that every statute be implemented by regulation. How do we know that? Let's check with the U.S. Supreme Court for their opinion and insight in a 1960 criminal case.

U.S. vs. Mersky

The result is that neither the statute nor the regulations are complete without the other, and only together do they have any force. In effect, therefore, the construction of one necessarily involves the construction of the other." US vs. Mersky (361 US 431, 4 L ed 2nd 423)

If we can locate the corresponding regulation for the statute 922, then we can all be assured that the convictions of those many thousands of cases we mentioned are in order, and that none of those people have had their "life, liberty, or property seized without the due process of the law". (See Article 5 of The Bill of Rights).

The law requires that an Administrative Agency be clear about how the statute will be implemented and who is subject to regulatory police powers. That is why the regulation is needed. The Dept. of Justice and the B.A.T.F. are administrative agencies.

According to the Administrative Procedures Act found in Title 5 US Code §553, the regulations promulgated by the Bureau of Alcohol, Tobacco and Firearms must first be published in the Federal Register for public comment and debate by interested persons. Once the rulemaking process is lawfully finished, the regulation is listed in the Code of Federal Regulations (CFR). Looking in the Parallel Table of Authorities and Rules we found the regulation for the Statute 922 in the following table.

<sup>1</sup> person- A natural person OR an entity such as a corporation.

| Excerpt from the Parallel Table of Authorities and Rules<br>Statutes in Title 18<br>U.S. Code Section | Regulations in CFRS<br>Code of Federal Regulations |
|---|--|
|---|--|

|         |                  |
|---------|------------------|
| 847     | 27 Parts 55, 178 |
| 921-928 | 27 Part 178      |
| 921     | 27 Part 72       |
| 926     | 27 Part 200      |
| 951     | 28 Part 73       |

In the above table Statutes 921-928 all have one or more implementing regulations. They have been properly implemented into law and have force and effect of law. §922(g) would be included in §921-§928. It's application is at Title 27, (Alcohol, Tobacco and Firearms), CFR Part 178. Earlier we said that Regulations will be clear about who the Statute applies to. Statutes are general in that they use such terms as "any person" to cover any situation, leaving to the regulations the specifics. Congress delegates the authority to the agency to define specifically who the regulations will apply to, and how it will be implemented. (i.e.. the administrative procedures to be followed).

Lets look at CFR 27 Part 178, titled Commerce in Firearms and Ammunition. It's a lengthy regulation with 110 sections. (Very Specific). The first section is:

Sec. 178.1 Scope of regulations.

(a) General. The regulations contained in this part relate to commerce in firearms and ammunition and are promulgated<sup>2</sup> to implement Title 1, State Firearms Control Assistance (18 U.S.C. Chapter 44), of the Gun Control Act<sup>3</sup> of 1968.

(b) Procedural and substantive requirements. This part contains the procedural and substantive requirements relative to:

- (1) The interstate or foreign commerce in firearms and ammunition;
- (2) The licensing of manufacturers and importers of firearms and ammunition, collectors of firearms, and dealers in firearms;
- (3) The conduct of business or activity by licensees; -
- (4) The importation of firearms and ammunition;
- (5) The records and reports required of licensees;
- (6) Relief from disabilities under this part;
- (7) Exempt interstate and foreign commerce in firearms and ammunition; and
- (8) Restrictions on armor piercing ammunition.

*[underlines added]*

Read all or part of the remainder of this regulation or any other regulation and you will see that these are Administrative Procedures that apply to people within the Agency. To confirm what we are saying about Administrative Regulation for Government Agencies we offer another U.S. Supreme Court ruling:

**California Bankers Association vs. Schultz**

Under the Act, the Secretary of the Treasury is authorized to prescribe by regulation certain record keeping and reporting requirements for banks and other financial institutions in this country. ... we think it is important to note that the Acts civil and criminal penalties attach only upon violation of regulations promulgated by the Secretary; if the Secretary were to do nothing the Act itself would impose no penalties on anyone. **416 US 21, 39L.ed.2d 812** *[underlines added]*

Do you see the part that states the Regulation must be violated to incur penalties? How is that possible if

<sup>2</sup> Promulgate: to bring forward, to make public.

<sup>3</sup> Act: Legislative action of Congress as a statute or statutes.

you are not under Regulatory Powers of the Agency? (Licensed, registered under their authority, or agency employees). Would they apply to you?

The famous Wickard v. Filburn (1942) case, **relied on** by Federal prosecuting attorneys and judges to **claim** jurisdiction under the interstate commerce clause, actually says **quite the opposite of how our courts now interpret it**:

**It is of the essence of regulation that it lays a restraining hand on the self-interest of the regulated and that advantages from the regulation commonly fall to others. ... the Government gave the farmer a choice which was, of course, designed to encourage cooperation and discourage non-cooperation. It is hardly lack of due process for the Government to regulate that which it subsidizes.- Wickard (317 US 111,129-131) [underlines added]**

Because Filburn was applying to receive benefits (subsidy prices for his wheat), he was liable for the agency's penalties, as he was in violation of the program **regulations**. Who were the "others"? Weren't the "others" those farmers who did NOT register to receive benefits and grew as much wheat as they wanted?

The fraudulently applied holdings of the Wickard case have been used by our government over and over since 1942 to extend their jurisdiction into every area of our lives. One of the greatest achievements of this fraud is the Controlled Substance Act of 1970, in which our government claimed jurisdiction over all drugs via commerce holdings from Wickard.

In 2004 Attorney Allison Margolin **challenged** Federal jurisdiction with a motion to dismiss charges (U.S. v. Landa), in which she stated:

**The precedent upon which the federal government's ability to govern interstate commerce, Wickard v. Filburn, is premised upon the fact that the plaintiff in that case registered in a federal program. ...the Wickard basis of jurisdiction is inapplicable here.**

The authority to regulate interstate commerce is a limited power granted by We the People to our U.S. Government by our Constitution. (Article 1 Section 8) This limited power does not supercede Our Inalienable Rights (in this case: "the right of the People to keep and bear arms shall not be infringed.") The 2nd Amendment was intended to secure this right from possible Government intervention or abuse of its powers.

Where **rights** secured by the constitution are involved, there can be no rule making or legislation, which would abrogate them. - Miranda v. Arizona, 384 U.S. 491

Let's look at another U.S. Supreme Court case. Though the issue of regulations was not raised by either party and the Supreme Court didn't bring it up either, lest they expose the fraud of Federal Gun Law: leaving us to believe it has general application to people in the private sector.

### **U.S. vs Lopez** 514 U.S. 549 (1995)

After respondent, then a 12th grade student, carried a concealed handgun into his high school, he was charged with violating the Gun-Free School Zone Act of 1990, which forbids "any individual knowingly to possess a firearm at a place that [he] knows.... is a school zone," 18 U.S.C. 922(q) (1) (A). ... the Court of Appeals held that, in light of what it characterized as insufficient congressional findings and legislative history, 922(q) is invalid as beyond Congress' power under the Commerce Clause.

[Excerpts from ruling:]

The Act exceeds Congress' Commerce Clause authority. Section 922(q) is a criminal statute that by its terms has nothing to do with "commerce" or any sort of economic enterprise, however broadly those terms are

defined.

Justice Rehnquist: [excerpts from his opinion, U.S. vs Lopez]

Under the theories that the Government presents in support of 922(q), it is difficult to perceive any limitation on federal power, even in areas such as criminal law enforcement or education where States have historically been sovereign. Thus, if we were to accept the Government's arguments, we are hard-pressed to posit any activity by an individual that Congress is without power to regulate.

And here is an excerpt from Clarence Thomas concurring opinion, U.S. vs Lopez:

These cases all establish a simple point from the time of the ratification of the Constitution to the mid-1930s, it was widely understood that the Constitution granted Congress only limited powers, notwithstanding the Commerce Clause.

When asked at oral argument if there were any limits to the Commerce Clause, the Government was at a loss for words. Likewise the principal dissent insists that there are limits, but it cannot muster even one example. Indeed the dissent implicitly concedes that its reading has no limits when it criticizes the Court for "threaten[ing] legal uncertainty in an area of law that...seemed reasonably well settled." The one advantage of the dissent's standard is certainty: it is certain that under its analysis everything may be regulated under the guise of the Commerce Clause.

At an appropriate juncture we must modify our Commerce Clause jurisprudence. Today, it is easy enough to say that the Clause certainly does not empower Congress to ban gun possession within 1,000 feet of a school. [end of opinion of Judge Clarence Thomas, , U.S. vs Lopez]

Notice how the Government and the Court flounder here trying to determine the extent of Congress' authority? Notice how Congress authority to regulate Interstate Commerce now includes Intrastate Commerce also? While trying to define the parameters of lawful regulation what do they overlook? That's right, the Regulations! What would happen if they applied the due process of law (the application of the regulation) to determine who has what authority and over whom?

How did the violation of our due process occur? Legislators, Judges, and Government Agents have all taken oaths to uphold and protect our Constitution. Under whose authority was this fraud perpetrated? We feel it is by authority of WE the People. We should remember some of the principles this nation was founded on, like: Our Government exists only by the authority of We the People, or the sovereignty of the Republic resides in We the People. It sounds like We the People should take more responsibility and accountability for the actions of our Government. If we expect positive changes, isn't it up to the whole of We the People to bring this change about? The best course of action that We the People can take is by obtaining information and wielding it properly, and above all, standing up for our rights.

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**We must remember always that accusation is not proof, and that conviction depends upon evidence and due process of law.**

We will not walk in **fear**, one of another. We will not be driven by **fear** into an age of unreason, if we dig deep in our history and our doctrine, and remember that we are not descended from **fearful** men, not from men who **feared** to write, to speak, to associate, and to defend causes that were for the moment unpopular.

— Edward R. Murrow