

COMPLAINT #1 - VIOLATION OF 2ND and 9TH AMENDMENT DEFENSE
FILE IN → UNITED STATES DIST. COURT Case #CR96-500C
FIRST AMENDMENT PETITION FOR REDRESS OF GRIEVANCES

THE LAW HAS ALWAYS BEEN ON YOUR SIDE - USE IT TO BUILD A BETTER, STRONGER AMERICA.



UNITED STATES CONSTITUTIONAL CITATION CRIMINAL COMPLAINT

AFFIDAVIT AND BRIEF OF INFORMATION

THE UNITED STATES ATTORNEY'S OFFICE & DISTRICT COURT
DISTRICT COURT SUPREME COURT HOUSE OF REPRESENTATIVES SENATE JUDICIARY COMMITTEE PRES. ETC.
FOR THE DISTRICT OF (State) WASHINGTON at SEATTLE JURISDICTION
IN THE COUNTY OF KING 18 USC 241.

UNITED STATES OF AMERICA

By Hartford Van Dyke, (206) 687-5680

P.O. Box 3100, BATTLE GROUND, WASH. 98604

VS. U.S. DISTRICT COURT: Proxy Plaintiff(s)/Accuser(s)
Judge John C. Coughenour, Susan B. Dohrman,
Katrina C. Pflaumer, William H. Redkey, Jr.,
Mark N. Bartlett, Gene Porter, et al. -

AND ANY UNKNOWN OTHERS See next Defendant(s)/Accused
two attached pages.

REFERENCES'
42 USC 1983, 1985, 1986

Case Number

→ CR96-500C ←
(# CR96-281M)

Citation,
Complaint,
Affidavit
and Brief of
Information

The above named defendant(s) is/are accused by this instrument of the offense of violation of the herein listed and marked parts of the U.S. Constitution—the ORIGINAL and SUPREME Law of the Land.

Said defendant(s), on or about July 26, 1996 and continuing to present 1997.
in KING County, State of WASHINGTON

did unlawfully Plaintiffs

deny the Defendants in Case # CR96-281M and
Case # CR96-500C) their 2nd and 9th Amendment
U.S. Constitutional Rights as detailed in the
next two attached pages entitled "DEFENDANTS
DID UNLAWFULLY", "COMMITTED AS FOLLOWS"
followed by three pages of boxform ledgering,
and 12 pages of Exhibits, by Attorney/Lawyer
David B. Zuckerman, and some supporting tables,
4 pages.

DEFENDANT(S) DID UNLAWFULLY

The above named Defendants herein are accused by this instrument of the offense of violation of the herein listed and marked parts of the U.S. Constitution—the ORIGINAL and SUPREME Law of the Land. Said Defendants, on or about July 26, 1996, through December 27, 1996, (Zuckerman's Motion day explained later) and to the present, February 3, 1997, in King County, State of Washington through what is now known as the United States District Court (at Seattle, Washington) Criminal Case #CR96-500 C, having knowledge of the law and the power to prevent the Constitutional deprivation of Plaintiffs' herein (Defendants in Case No. CR96-500C) guaranteed Rights, with intent, without authority and under color of law **did unlawfully**: engage in a conspiracy to use the offices, formalities, ceremonies, and power of the U.S. Government and their official bonds and professional licenses to overthrow the United States Government, and specifically, to defraud and betray the Plaintiffs herein (Defendants, American Citizens, in Case #CR96-500C), of their lawful Constitutional exercise of their 9th Amendment natural law invariant individual right of self-defense and self-preservation, and the corollary 2nd Amendment Constitutional right to "Keep and Bear Arms"—rights based on Natural Law, hence invariant and not subject to human opinion or prosecution. Said acts are in violation of Title 18 USC 241.

COMMITTED AS FOLLOWS

Re: Seattle, Washington U.S. District Court multidefendant Criminal Case #CR96-500C.

On the evening of Saturday February 1, 1997, a person who has been able to follow William (Bill) Smith's case in the U.S. District Court presented to me a brief entitled "DEFENDANTS' JOINT MOTION TO DISMISS BASED ON SECOND AND NINTH AMENDMENTS, AND SUPPORTING MEMORANDUM" (hereinafter Motion) that was written and delivered to the Court by one of the public defenders in that case, David Zuckerman, back in December, 1996. It was an excellent argument and defense based on the 2nd and 9th Amendment's to the U.S. Constitution, but it was rejected by Judge John C. Coughenour who is conducting the mass trial of William (Bill) Smith and eight other people accused of breaking the law by exercising their U.S. Constitutional 2nd and 9th Amendment Rights.

As I understand the matter, Judge Coughenour forbade Mr Zuckerman and the other public defenders to raise the 2nd Amendment as an argument in defense of their clients. But the issue in this matter clearly requires a 2nd Amendment defense, involving the legal existence of an "unorganized militia" in each state and Mr. Zuckerman in his Motion not only proved that, but went on to show that the 2nd Amendment defense was merely corollary to the more general Constitutional 9th Amendment natural right to protection consistent with the natural right of every animal under Natural Law to exercise self-defense in a predatory world. Mr Zuckerman showed that the self-defense argument "implicitly covers all reasonable tools of self-defense" including "distinctly military weapons" and that it also exists there for the obvious reason of absurdity (reductio absurdum) that the Constitution does not and could not reasonably guarantee the right of anyone to absolutely rely on Society for one's own defense.

In rejecting Mr. Zuckerman's Motion, Judge Coughenour committed a wide variety of offenses against the Plaintiffs' herein (Defendants in Case No. CR96-500C) the Public Defenders, the Court, the Government, the Military, the U.S. Constitution, and the Public generally. The soldiers of our army,

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navy, air force, national guard, marines, and other military organizations take a 9th and 2nd Amendment oath of induction to defend this Nation and its Constitution against all enemies both foreign and domestic. Judge Coughenour treats with absolute and unlimited contempt (1) our soldiers' oath, (2) our soldiers' object of protecting the Constitution and this nation founded upon it, (3) our soldiers' mortal combat, (4) our soldiers' ultimate sacrifice of their lives, and (5) the unorganized militia which must provide those soldiers. The Judge's character is clearly that of a tyrant and a traitor.

But why did Mr. Zuckerman not force Judge Coughenour by legal reason and force of commercial processes to correct Judge Coughenour's contempt for Mr. Zuckerman's clear presentation of legal principle? Mr. Zuckerman is clearly able to reason. And the judge clearly is motivated by other interests.

The answer is sad. A Washington State attorney admitted to a person who became one of my clients that when an attorney wants to buy malpractice insurance, he has to promise that he will not sue another attorney or a judge. And in order to win cases in today's summary/"judge only" trials, he has to be on good terms with the judge. Since the establishment of the Bar Association in 1878, the law schools and the courts have discouraged the exercise of principles, reason and conscience, and stress only process, government expedience, and government advantage. That feudal attitude is known as attornment, hence, the title "Attorney". The public doesn't realize that it is the public's responsibility to help the law abiding attorneys, what I would call real lawyers, to overcome the corruption of the courts and the judges.

I agree with the principles Mr. Zuckerman has stated. But, I am not inhibited by the "government privilege"-constrained system which "allows" Mr. Zuckerman to work in the legal cesspool of today's courts. As a Citizen, I am subject, as all Citizens including Mr. Zuckerman are subject, to obey 42 USC 1986, the federal "brother's keeper statute". Therefore, I must support Mr. Zuckerman's efforts to clean up the legal cesspool by **filing this Criminal Complaint**.

Another public defender in this same case, Howard Ratner, has pointed out the cleverly engineered libel, slander, and deliberate tactics of McCarthyism which the prosecutor, Assistant U.S. Attorney Susan B. Dohrmann, and her team are engaging in to destroy the lives and sacrifices of the defendants, and the efforts of the public defenders. Susan B. Dohrmann, William H. Redkey, Jr., Mark N. Bartlett, Gene Porter, and their boss, U.S. Attorney Katrina C. Pflaumer are also supporting the treason of Judge John C. Coughenour, Judge David E. Wilson, Ramon E. Garcia, Michael German and others.

If the U.S. Attorney's Office wants to deal with a real weapons problem, then they should attack the Silent Weapons System of the New World Order engineered by the 1973 Nobel Prize winner in economics, Wassily W. Leontief whose job was to engineer a World Economics Computer, a Silent Weapons System, to control and automate the World's economy. He was financed by the Rockefeller Foundation and others who intend to benefit by, and rule the world by, using the Silent Weapons System as an economic tool par excellent. See the attached (approx. 80 page) Exhibit on the Silent Weapons System.

I wrote the book The Skeleton in Uncle Sam's Closet about the treason committed by President Roosevelt to ensure the success of the Pearl Harbor Attack, and I wrote the book Silent Weapons for Quiet Wars about the computer system of the New World Order, so I need not say any more to describe the treason of Judge Coughenour who is an obvious part of the problem and puppet of the New World Order.

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WE HAVE SIMPLIFIED AND CODED (SEE NEXT BOX)
U.S.CONSTITUTIONAL LAWS AS SHOWN FOR BETTER
AND MORE COMPLETE UNDERSTANDING FOR ALL.

101/OC—Obligation of Contracts

└─ Clause 1
└─ Section 10
└─ Article 1

AM14.1/EP—Equal Protection
└─ Section 1
└─ Amendment 14

I. PROTECTIONS OF YOUR BASIC RIGHTS —(If you prefer, add more on the line below labeled "other")

- ☒ AM1/FR No law shall be made limiting my freedom of religion and how I apply it to my life (conscience).
☐ AM6/AC The accused may have the assistance of anyone/anything in the presentation of his defense.
☒ AM6/AC, AM1/FR It is up to me to choose and have as counsel whoever can best understand and represent my conscience (what I think is right or wrong). *
☒ AM13.1/S,IS No law-abiding person shall be forced to do anything he does not want to do.
☐ OTHER

* BILL SMITH especially (TRACY LEE BROWN)

II. GUARANTEES OF AN HONEST GOVERNMENT THAT GIVES FAIR AND EQUAL PROTECTION FOR ALL

- ☒ AM1/FS No law shall limit my freedom of speech-I can say whatever I believe - especially if required (when someone requires me to tell the Truth, the whole Truth, and nothing but the Truth...). *1
☐ AM1/FP No law shall limit freedom of the press- or my freedom to express my ideas in writing or printing.
☒ AM6/INFO The accused must be informed why he is on trial (and the nature and cause of the complaint).
☒ AM6/WA The accused must be confronted by all witnesses against him.
☒ AM6/WF The accused has the right to compulsory process to get all people or materials in his favor.
☐ AM6/PT In all trials involving the threat of jail, the accused shall have a public trial (including friends).
☒ AM5/IND No person shall be held to answer for any serious crime without a Grand Jury indictment. *2
☒ AM14.1/CUS All persons born or naturalized in the U.S. are citizens and protected by the U.S. Constitution.
☒ AM14.1/EP All persons shall be equally protected and restricted by the law.
☒ 421/UP,UI People of each state can do anything that is allowed in any other state.
☒ 411/ARP No state shall refuse to acknowledge the actions and records of other states.
☒ AM14.1/CP,CI No state shall make or enforce any law limiting rights guaranteed in the U.S. Constitution.
☐ OTHER

*1 ESPECIALLY BILL SMITH (TRACY LEE BROWN)

*2 INDICTMENT MANUFACTURED BY ENTRAPMENT.

III. GUARANTEES OF REASONABLE ENFORCEMENT OF YOUR RIGHTS

- ☒ AM4/PS I am safe from unwarranted searches/seizures of myself, or anything mine (or my responsibility).
☒ AM4/W,PC Any action taken against me must be fully described to me in writing, issued by a court of law (not an agency-like IRS), signed by a judge (not an agent-like IRS), and sworn on oath. *
☒ 101/OC No state shall pass any law impairing the obligation of contracts.
☐ OTHER

* PATENTLY OBVIOUS FALSE CHARGES AGAINST 9th & 2nd Amend

IV. GUARANTEES OF DUE PROCESS (ACTION/REACTION PROCESS THAT PROVIDES JUSTICE FOR ALL)

- ☒ AM5/DP No person shall be deprived of anything without a fair trial based on Constitutional law.
☒ AM14/DP No State shall deprive anyone of anything without a fair trial based on Constitutional law.
☒ 192/HC I have a right to further court-process if I have been unlawfully confined (Writ of Habeas Corpus).
☐ 322/SCA I have a right to appeal my case to a higher court.
☐ OTHER

V. PROTECTIONS AGAINST UNREASONABLE GOVERNMENT BEHAVIOR (OVERCONTROLLING YOUR LIFE)

- ☐ 193/XL No law shall be passed today that can punish me for something I did yesterday (no retroactive laws).
☐ 101/XL No state shall pass any law today that can punish me for something I did yesterday (ex post facto).
☐ 411/CPE Congress determines the effect of state legal processes.
☐ AM5/DJ No person shall suffer more than once for the same offense.
☒ 101/LMR No state shall declare war on a person (resort to force) in violation of the Constitution.
☒ AM8/XB No excessive bail shall be required - bail shall be proportional to crime. *
☒ AM8/XF No excessive fines shall be imposed - fines shall be proportional to crime. *
☒ AM8/CP No cruel punishment (torture) shall be inflicted on anyone. *
☒ AM8/UP No unusual punishment shall be inflicted - there shall be equal suffering for equal crimes. *
☐ OTHER

* POLITICAL PRISONERS

VI. PROTECTIONS AGAINST GOVERNMENT SECRECY — WHICH FORCES GOVERNMENT TO BE HONEST

- ☐ AM6/INFO, AM14.1/EP I may require as much in writing as is required of me.
- J ☒ 311/GB All judges may only hold their office during good behavior (lawful, patient, dignified, courteous).
- ☒ AM5/JC No one shall give up or lose anything (taxes) for public gain without fair compensation.
- ☐ AM7/JT All trials not involving the threat of jail, and involving over \$20 shall be tried by jury.
- ☐ AM6/ST,PT All trials involving the threat of jail shall be speedy and public.
- ☐ 323/JT All trials involving the threat of jail shall be by jury.
- ☐ 323/TIS Trial must be in the state where the crime was committed.
- ☐ AM6/IJT A jury must impartially rule on facts (even ruling against any law they believe unfair).
- ☒ AM6/TWC A jury must be of the state and district where the crime was committed. *
- ☒ AM6/DPA The trial district must be pre-established by law to insure a fair sampling of people in the jury.*
- ☐ 101/GS Money is legal tender ONLY if it is made of, or exchangeable at a bank for, silver or gold.
- ☐ 101/GS,TD No state shall make anything but silver or gold legal tender for payment of debts.
- ☐ 101/CM No state is allowed to coin or print money.
- ☐ 101/EBC No state is allowed to print anything to be used in the place of money.
- ☐ 101/OC No state is allowed to weaken the dollar bill's obligation to be exchangeable for silver or gold.
- ☐ 185/CM Only Congress can coin money (not the Federal Reserve, which is an unlawful private corporation).
- ☐ 185/VM Congress has valued money at 412.5 grains of standard silver (or equivalent gold) to the dollar.
(Federal Reserve notes don't promise any silver or gold at all! So, they are unlawful and cannot be used in any transactions with the Government (payment of taxes, bail, fees, fines, court costs, etc.).
- ☐ 186/PC Printing money without lawful authorization is counterfeiting; Congress must punish counterfeiters.
- ☒ 101/TN No state shall set anyone (including Bar Assoc., Esquire, etc.) above the Common Man.
- ☒ 101/TAC No state shall work against the U.S. Constitution with anyone (Bar Assoc., IRS, etc.). *
- ☒ 431/NNS No controlling agency (Bar Assoc., IRS) shall be formed (or act) in violation of the U.S. Constitution.
- ☒ 331/TAU No controlling agency shall harass a U.S. Citizen (mixed war/treason).
- ☒ 111/SP Only Congress has the power to make laws.
- ☐ 311/SP Only courts can decide punishments and rewards with regard to the law.
- ☒ OTHER 197FTN — NO TITLES OF NOBILITY — U.S. PROHIBITION.
* INVASION OF THE JURISDICTION OF THE STATE/NATION OF WASHINGTON

VII. PROTECTIONS AGAINST GOVERNMENT COMPLETELY CONTROLLING YOUR LIFE (DOMINATION)

- ☐ AM5/WAH No person shall be forced to say or do anything that can be used against him later (for any reason).
- ☒ AM3/QS No public servant shall be quartered in a public house unlawfully or without public consent.
- ☒ 193/BA No person or group can make a law, judge on it, AND punish under it (this takes away ALL rights).*
- ☒ 101/BA No state shall allow any person or group to make a law, judge on it, AND punish under it. *
- ☐ OTHER *BILL OF PAINS AND PENALTIES

VIII. GUARANTEES THAT IF SOMETHING IS WRONG, YOUR GOVERNMENT MUST DO SOMETHING

- ☒ AM14.1/CUS All persons born or naturalized in the U.S. are citizens and protected by the U.S. Constitution.
- ☐ AM14.4/PDQ Taxes (public debt) spent for unlawful purposes may be questioned.
- ☒ 197/NUW No money may be withdrawn from the Public Treasury for unlawful purposes. *
- ☐ AM16/TX Congress has the power to lay and collect taxes only for lawful purposes.
- ☒ AM5/JC No one shall give up or lose anything (taxes) for public gain without fair compensation.
- ☒ AM1/PA,RG I may assemble peaceably with others to ask the Government to protect my rights.
- ☐ AM24/VPT The right to vote may not be denied to anyone because they fail to pay taxes.
- ☒ AM9/ER All rights belong to the people; some are stated, some are not.
- ☒ AM10/PR All government power comes from the consent of the people governed.
- ☒ AM5/DP No person shall be deprived of anything without a fair trial based on Constitutional law.
- ☒ AM14/DP No state shall deprive anyone of anything without a fair trial based on Constitutional law.
- ☒ 441/GRG The U.S. guarantees a system of laws to protect the majority AND minority.
- ☒ 612/SL "This Constitution is the Supreme Law of the Land."
- ☒ 613/BO All law makers, court officials, and enforcement officers are bound by oath to the U.S. Constitution.
- ☐ 218/OATH The President's oath is to "faithfully execute" his office and "defend the U.S. Constitution".
- ☐ 231/GX The President shall "take care that the laws be faithfully executed (enforced)."
- J ☒ 612/JB All judges are bound by oath to support the United States Constitution.
- ☒ 441/PAI The U.S. will protect every U.S. Citizen against any attack upon themselves or their rights.
- ☒ 441/PADV The U.S. will protect every U.S. Citizen against local attack upon themselves or their rights.
- ☒ AM2/KBA The right of people to keep and bear arms shall never be limited.
- ☒ AM14.3/HO,IR No person shall hold office if he rebels against or violates the U.S. Constitution (treason).
- ☐ OTHER

* INDICTMENT MFD. BY TAX-FINANCED ENTRAPMENT SCHEME

- ☒ 321/JUC The Court's power reaches into all cases involving the U.S. Constitution or any laws made under it.
☒ 321/JUP The Court's power shall extend to any case involving the United States as a party.
☐ OTHER

TITLE 18 SECTION 241 - (18 USC 241) - CONSPIRACY AGAINST THE RIGHTS OF CITIZENS

If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or if two or more persons go in disguise on the highway or the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured - they shall be fined not more than \$10,000 or imprisoned not more than 10 years, or both; and if death results they shall be subject to imprisonment for any term of years or for life.

TITLE 18 SECTION 242 - (18 USC 242) - DEPRIVATION OF RIGHTS UNDER COLOR OF LAW

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than \$1,000 or imprisoned not more than one year, or both; and if death results shall be subject to imprisonment for any term of years or for life.

THEREFORE, the Court shall punish according to TITLE 18 SECTION 241/242.

- ☒ 311/GB All judges may only hold their office during good behavior (lawful, patient, dignified, courteous).
☒ 612/JB All judges are bound by oath to support the Constitution of the United States of America.
☒ 613/BO All law makers, court officials, and enforcement officers are bound by oath to the U.S. Constitution.
☒ AM14.3/HO,IR No person shall hold office if he rebels against, or violates the U.S. Constitution.
☐ OTHER

THEREFORE, the Court shall punish the defendant(s) for fraud (drawing a wage for disservice) and misprision (mis-use of public office or contempt against the U.S. Constitution, the Supreme Law of the Land).

I (we) certify under penalties of perjury that I (we) have grounds to, and do believe that the above accused person(s) committed the above offense(s) contrary to law.

(Sign here)

(Sign here)

Lyle Hartford Van Dyke (Jr.)

Date *2/4/97*

Date

Spuyani 2/4/97
NOTARY

NOTARY PUBLIC
STATE OF WASHINGTON
SHAMIM PUNJARI
My Appointment Expires DEC 21, 1998

6 Named Defendants including 1 Judge - at this time ⁵⁴ 324+2
Courts: Page 2 + Page 3 + page 4 = 24 + 27 + 3 + 25 = 54 + 25
54 counts per Defendant + 2 extra counts per Judge.

THE CIVIL VALUE OF THIS COMPLAINT IS 326 COUNTS AT \$10,000 PER COUNT = \$3,260,000

THIS COMPLAINT IS AN AFFIDAVIT OF OBLIGATION IN THE NORMAL COMMERCIAL SENSE AND AS SUCH IS A SECURITY REPRESENTING ACCOUNTS RECEIVABLE

**AND IS A LIEN AGAINST ALL
MALPRACTICE BONDS AND REAL
AND MOVEABLE PROPERTY OF DEFENDANTS**

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COUNTS	
DEFENDANT(S)	Judge John C. Coughenour 56
	Susan B. Dohrman, AUSA 54
	Katrina C. Pfaffner, U.S. ATTY 54
	William H. Redkey Jr., A.U.S. ATTY 54
	Mark N. Bartlett, A.U.S. ATTY 54
	Gene Porter, A.U.S. ATTY 54
COMPLAINT #1 VIOLATION OF 2nd & 9th Amend COMPLAINT # CR96-580C COMPANION CASE # CR96-281A COUNTY KING STATE WASHINGTON TOTAL COUNTS: 326 @ 10,000 = \$3,260,000	

I.	<input checked="" type="checkbox"/> AM8/XF <input checked="" type="checkbox"/> AM8/CP <input checked="" type="checkbox"/> AM8/UP <input type="checkbox"/> OTHER	<input type="checkbox"/> AM24/VPT <input checked="" type="checkbox"/> AM9/ER <input checked="" type="checkbox"/> AM10/PR <input checked="" type="checkbox"/> AM5/DP <input checked="" type="checkbox"/> AM14/DP <input checked="" type="checkbox"/> 441/GRG <input checked="" type="checkbox"/> 612/SL <input checked="" type="checkbox"/> 613/BO <input type="checkbox"/> 218/OATH <input type="checkbox"/> 231/GX <input checked="" type="checkbox"/> 612/JB <input checked="" type="checkbox"/> 441/PAI <input checked="" type="checkbox"/> 441/PADV <input checked="" type="checkbox"/> AM2/KBA <input checked="" type="checkbox"/> AM14.3/HO,IR <input type="checkbox"/> OTHER	
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II.	<input checked="" type="checkbox"/> AM1/FS <input checked="" type="checkbox"/> AM1/FP <input checked="" type="checkbox"/> AM6/INFO <input checked="" type="checkbox"/> AM6/WA <input checked="" type="checkbox"/> AM6/WF <input type="checkbox"/> AM6/PT <input checked="" type="checkbox"/> AM5/IND <input checked="" type="checkbox"/> AM14.1/CUS <input checked="" type="checkbox"/> AM14.1/EP <input checked="" type="checkbox"/> 421/UP,UI <input checked="" type="checkbox"/> 411/ARP <input checked="" type="checkbox"/> AM14.1/CP,CI <input type="checkbox"/> OTHER	<input type="checkbox"/> 186/PC <input checked="" type="checkbox"/> 101/TN <input checked="" type="checkbox"/> 101/TAC <input checked="" type="checkbox"/> 431/NNS <input checked="" type="checkbox"/> 331/TAU <input checked="" type="checkbox"/> 111/SP <input type="checkbox"/> 311/SP <input checked="" type="checkbox"/> OTHER 197/TN	IX. <input type="checkbox"/> 241/IMP <input type="checkbox"/> 136/STI <input type="checkbox"/> 136/SCI <input type="checkbox"/> 137/JI <input type="checkbox"/> 137/LSL <input type="checkbox"/> 331/TC <input type="checkbox"/> 332/TP <input type="checkbox"/> AM14.3/RD <input type="checkbox"/> OTHER <input checked="" type="checkbox"/> 321/JUC <input checked="" type="checkbox"/> 321/JUP <input type="checkbox"/> OTHER
III.	<input checked="" type="checkbox"/> AM4/PS <input checked="" type="checkbox"/> AM4/W,PC <input checked="" type="checkbox"/> 101/OC <input type="checkbox"/> OTHER	<input type="checkbox"/> 186/PC <input checked="" type="checkbox"/> 101/TN <input checked="" type="checkbox"/> 101/TAC <input checked="" type="checkbox"/> 431/NNS <input checked="" type="checkbox"/> 331/TAU <input checked="" type="checkbox"/> 111/SP <input type="checkbox"/> 311/SP <input checked="" type="checkbox"/> OTHER 197/TN	- END OF COUNT - X. contempt misprision <input type="checkbox"/> 161/CS <input type="checkbox"/> 311/CS <input type="checkbox"/> 217/CS <input type="checkbox"/> AM14.4/OC,IR <input type="checkbox"/> AM14.4/OC,V <input type="checkbox"/> 101/OC <input type="checkbox"/> 231/GX <input type="checkbox"/> 231/CO <input type="checkbox"/> OTHER
IV.	<input checked="" type="checkbox"/> AM5/DP <input checked="" type="checkbox"/> AM14/DP <input checked="" type="checkbox"/> 192/HC <input type="checkbox"/> 322/SCA <input type="checkbox"/> OTHER	VII. <input type="checkbox"/> AM5/WAH <input checked="" type="checkbox"/> AM3/QS <input checked="" type="checkbox"/> 193/BA <input checked="" type="checkbox"/> 101/BA <input type="checkbox"/> OTHER	<input type="checkbox"/> 161/CS <input type="checkbox"/> 311/CS <input type="checkbox"/> 217/CS <input type="checkbox"/> AM14.4/OC,IR <input type="checkbox"/> AM14.4/OC,V <input type="checkbox"/> 101/OC <input type="checkbox"/> 231/GX <input type="checkbox"/> 231/CO <input type="checkbox"/> OTHER
V.	<input type="checkbox"/> 193/XL <input type="checkbox"/> 101/XL <input type="checkbox"/> 411/CPE <input type="checkbox"/> AM5/DJ <input checked="" type="checkbox"/> 101/LMR <input checked="" type="checkbox"/> AM8/XB	VIII. <input checked="" type="checkbox"/> AM14.1/CUS <input type="checkbox"/> AM14.4/PDQ <input checked="" type="checkbox"/> 197/NUW <input type="checkbox"/> AM16/TX <input checked="" type="checkbox"/> AM5/JC <input checked="" type="checkbox"/> AM1/PA,RG	<input type="checkbox"/> 311/GB <input type="checkbox"/> 612/JB <input type="checkbox"/> 613/BO <input type="checkbox"/> AM14.3/HO,IR <input type="checkbox"/> OTHER

WE HAVE SIMPLIFIED AND CODED (SEE NEXT BOX)
U.S.CONSTITUTIONAL LAWS AS SHOWN FOR BETTER
AND MORE COMPLETE UNDERSTANDING FOR ALL

101/OC—Obligation of Contracts
 Clause 1
 Section 10
 Article 1
 AM14.1/EP—Equal Protection
 Section 1
 Amendment 14

REF. #	TITLE	REF #	TITLE
111/SP	Separation(of) powers	AM1/FR	Freedom of religion
136/STI	Senate tries impeachment	AM1/PREB	Freedom of religion to establish basis
136/SCI	Senate Convict impeachment	AM1/FREI	Freedom of religion to establish institute
137/JI	Judgment impeachment	AM1/FRX	Freedom of religion-exerci
137/LSL	Liabile, subject to law	AM1/PS	Freedom of speech
153/HJP	House Journal proceedings	AM1/FP	Freedom of press
185/CM.VM	Coin money, value money	AM1/PA	Peaceful assembly
186/PC	Punish counterfeiting	AM1/RG	Redress grievances
189/CT	Constitute tribunals	AM2/KBA	Keep and bear arms
180.18/SP	Seperation of powers	AM3/QS	Quartering soldiers
192/HC	Habeas Corpus	AM4/PS	People secure
193/BA	Bill of Attainder	AM4/W.PC	Warrant, probable cause
193/XL	Ex post facto law	AM5/IND	Indictment
101/TAC	Treaties, Alliance, Confederation	AM5/DJ	Double jeopardy
101/LMR	Letters of Marque and reprisal	AM5/WH	Witness against himself
101/CM	Coin money	AM5/DP	Due process
101/EBC	Emit bills of credit	AM5/JC	Just compensation
101/GS.TD	Gold and Silver, tender in payments of debts	AM6/ST	Speedy trial
101/BA	Bill of Attainder	AM6/PT	Public trial
101/XL	Ex post facto law	AM6/IJT	Impartial jury trial
101/OC	Obligation of contracts	AM6/TWC	Trial wherein committed
101/TN	Title of nobility	AM6/DPA	District previously ascer- tained
211/SP	Seperation of powers	AM6/INFO	Information
217/CS	Compensation of service	AM6/WA	Witness against
218/OATH	Oath of president	AM6/WP	Witness in favor
221/ROW	Require opinion in writing	AM6/AC	Assistance of counsel
221/GRP	Grant reprieves and pardons	AM7/JT	Jury trial
222/AJ	Appoint judges	AM7/FX	Facts examined
222/AO	Appoint officers	AM8/XB	Excessive bail
222/AOL	Appoint officers by law	AM8/XF	Excessive fine
222/AV	Appointment vested	AM8/CP	Cruel punishment
231/GX	Guarantee execution	AM8/UP	Unusual punishment
231/CO	Commission officers	AM9/ER	Enumeration of rights
241/IMP	Impeachment	AM10/PR	Powers reserved
311/SP	Seperation of powers	AM11/JUC	Judicial power/U.S. Constitution
311/GB	Good behavior	AM13.1/S.IS	Slavery, involuntary servitude
311/CS	Compensation of service	AM14.1/CUS	Citizens of the U.S.
321/JUC	Judicial power	AM14.1/CP.CI	Citizens privileges, citizens immunities
321/JUP	U.S. Constitution	Am14.1/DP	Due process
322/SCA	Judicial power U.S. (a) party	AM14.1/EP	Equal protection of the la
323/JT	Supreme court appeal	AM14.3/HO.IR	Hold office. insurrection, rebellion
323/TIS	Jury trial	AM14.3/RD	Remove disability
331/TAU	Trial in state	AM14.4/PDQ	Public debt questioned
331/TC	Treason against U.S.	AM14.4/OC.IR	Obligation of contracts, insurrection, rebellion
331/TP	Treason conviction	AM14.4/OC.V	Obligation of contracts claims void
411/ARP	Treason punishment	AM16/TX	Tax
411/CPE	Acts, records and proceedings	AM24/VPT	Vote-pay tax
411/CPE	Congress prescribes effect of acts, records and proceedings		
421/UP,UI	Uniform privileges, Uniform immunities		
431/NMS	No new state		
441/GRC	Guarantee republican government		
441/PAI	Protect against invasion		
441/PADY	Protect against domestic violence		
612/SL	Supreme law of land		
612/JB	Judges bound by oath		
613/BO	All bound by oath		

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UNITED STATES CONSTITUTIONAL INFORMATION REFERENCE GUIDE

UNITED STATES CONSTITUTIONAL INFORMATION REFERENCE GUIDE

§ 341. Conspiracy against rights of citizens.

If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or

If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—

They shall be fined not more than \$10,000 or imprisoned not more than ten years, or both; and if death results, they shall be subject to imprisonment for any term of years or for life. (June 25, 1948, ch. 648, 62 Stat. 699; Apr. 11, 1968, Pub. L. 90-384, title I, § 103(a), 82 Stat. 75.)

§ 342. Deprivation of rights under color of law.

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than \$1,000 or imprisoned not more than one year, or both; and if death results shall be subject to imprisonment for any term of years or for life. (June 25, 1948, ch. 648, 62 Stat. 696; Apr. 11, 1968, Pub. L. 90-384, title I, § 103(b), 82 Stat. 75.)

TITLE 42.—THE PUBLIC HEALTH AND WELFARE

§ 1983. Civil action for deprivation of rights.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party in-

TITLE 18.—CRIMES AND CRIMINAL PROCEDURE

TITLE 42.—THE PUBLIC HEALTH AND WELFARE

§ 1983. Conspiracy to interfere with civil rights.

(1) Preventing officer from performing duties.

If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties:

(2) Obstructing justice; intimidating party, witness, or juror.

If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and

truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

(3) Depriving persons of rights or privileges

the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators. (R. S. § 1980.)

§ 1986. Same; action for neglect to prevent.

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1983 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action, and if

the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding \$5,000 damages therein, for the benefit of the widow of the deceased. If there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action

Honorable John C. Coughenour

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

UNITED STATES,

Plaintiff,

vs.

JOHN PITNER, et al.,

Defendants.

No. CR96-500C

DEFENDANTS' JOINT MOTION
TO DISMISS BASED ON SECOND
AND NINTH AMENDMENTS,
AND SUPPORTING
MEMORANDUM

Noted: December 27, 1996

Defendants John Pitner, Marlin Mack, Gary Kuehnoel, Frederick Fisher, John Kirk, Richard Burton, Tracy Brown, Judy Kirk and Theodore Carter, through their attorneys of record, move to dismiss counts 1-18 of the indictment against them because this prosecution violates the Second and Ninth Amendments to the United States Constitution. This motion is supported by the following memorandum of law.

Undersigned counsel has conferred with counsel for the above defendants and is authorized to bring this motion on their behalf.

DATED this _____ day of _____, 199__.

Respectfully submitted:

David Zuckerman, WSBA #18221
Attorney for Defendant Gary Kuehnoel
On behalf of all defendants named above

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MEMORANDUM

I. INTRODUCTION

The nine defendants bringing this motion are charged in count 1 of the second superseding indictment ("SSI") with conspiracy to commit, among other things, the following crimes:

- (a) to make, possess, receive and transfer firearms in violation of Title 26, United States Code, Section 5861;
- (b) to possess and transfer machineguns in violation of Title 18, United States Code, Section 922(o);

In addition, John Pitner is charged in count 2, and Gary Kuehnoel in counts 2 and 13-15, with possession and transfer of machineguns in violation of 18 U.S.C. § 922(o). The following defendants are charged with possession of unregistered pipe bombs in violation of 26 U.S.C. § 5861(d): Marlin Mack counts 3-5 and 9-12; John Kirk and Richard Burton in counts 6 and 7; and John Kirk and Judy Kirk in count 8. Finally, Gary Kuehnoel is charged in counts 16-18 with possession of unregistered short-barreled rifles in violation of 26 U.S.C. § 5861(d).

Defendants Pitner, Mack, Kuehnoel, Fisher, and Carter are specifically identified in the indictment as members of the Washington State Militia. SSI at ¶1. The other four defendants bringing this motion are alleged to have shared the aims of the Washington State Militia and to have acted in concert with the militia members. All nine defendants are accused of a conspiracy in which they "prepared for armed confrontation with unnamed persons," SSI at ¶5, and "possess[ed] firearms, including, but not limited to machineguns and short-barreled firearms . . . pipe bombs, fragmentation grenades, incendiary grenades, modified mortar balls, sparkler bombs and claymore mines." SSI at ¶6-7.

Counts 1-18 of the indictment must be dismissed because they violate the Second and Ninth Amendments to the United States Constitution. As noted below, some of the

arguments presented in this brief have apparently been rejected by the Ninth Circuit. Defendants are asking that those rulings be limited to their special facts, or in the alternative that the rulings be overturned.

For purposes of this motion only, the Court may take the allegations in the indictment as true.

II. ARGUMENT

A. THE SECOND AMENDMENT REQUIRES DISMISSAL OF COUNTS 1-18

1. Introduction

The Second Amendment to the United States Constitution states: "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."

Judicial interpretation of and legal commentary on the Second Amendment are limited. The last Supreme Court case to deal directly with firearms regulation and the Second Amendment was United States v. Miller, 307 U.S. 174, 59 S.Ct. 816, 83 L.Ed. 1206 (1939). The last Ninth Circuit case was United States v. Tomlin, 454 F.2d 176 (1972), which dismissed a claim that 26 U.S.C. §§ 5841(a) and 5861(d) violated the Second Amendment in one sentence, holding that the argument was "undermined by controlling precedent," including Miller. Since its passage in 1986, 18 U.S.C. § 922(o) has apparently been challenged on Second Amendment grounds only one time, in United States v. Hale, 978 F.2d 1016 (8th Cir. 1992). As for legal commentary, "no one recognized by the legal academy as a 'major' writer on constitutional law has deigned to turn his or her talents to a full consideration of the Amendment." Levinson, The Embarrassing Second Amendment, 99 Yale L.J. 637, 639 n. 13 (1989).

As discussed below, the Second Amendment at the very least guarantees the collective right of citizens to bear arms that are reasonably related to the preservation of a well-regulated militia. Most of the cases rejecting Second Amendment challenges are

therefore distinguishable from this case, because they did not involve organized militia activity. In the alternative, defendants contend that the Second Amendment confers an individual right to possess the weapons charged here. Finally, defendants contend that the Ninth Amendment guarantees them the right to possess and use the weapons charged here for self defense.

2. Counts 1-18 Violate the Second Amendment Because the Charged Conduct was Reasonably Related to the Preservation of a Well-Regulated Militia

In United States v. Miller, 307 U.S. at 175, the defendant was charged with transporting in interstate commerce an unregistered sawed-off shotgun. The Court stressed that the Second Amendment must be interpreted in view of the purpose of militias at the time the constitution was adopted. Id. at 179. Miller made no showing that his sawed-off shotgun was possessed or transported for use with any sort of militia, rather than for illegal street crime, so he could not claim Second Amendment protection.

In the absence of any evidence tending to show that possession or use of a "shotgun having a barrel of less than eighteen inches in length" at this time has some reasonable relationship to the preservation or efficiency of a well regulated militia, we cannot say that the Second Amendment guarantees the right to keep and bear such an instrument. Certainly it is not within judicial notice that this weapon is any part of the ordinary military equipment or that its use could contribute to the common defense.

Id. at 178. "Miller might have had a tenable argument had he been able to show that he was keeping or bearing a weapon that clearly had a potential military use." Levinson, 99 Yale L.J. at 654. The Supreme Court has not addressed a Second Amendment issue since the Miller decision.

The only Ninth Circuit case to address a Second Amendment challenge to any statute involved in this case is United States v. Tomlin, 454 F.2d 176 (1972). There, the court rejected defendant's Second and Tenth Amendment challenges to "offenses proscribed by the National Firearms Act, 26 U.S.C. §§ 5841(a) and 5861(d)" in a four-sentence per curiam opinion. The court's entire legal analysis is as follows: "The two arguments made by

Tomlin are undermined by controlling precedent." Id. The Court cited three cases for this proposition, including Miller. It is impossible to tell from the Tomlin decision precisely why the Second Amendment argument was rejected. Presumably, as in Miller, defendant made no showing that the weapons involved had any relationship to a militia. The opinion says nothing about what weapons were involved or what purpose defendant put them to.

The only federal circuit case to deal with the Second Amendment and § 922(o) held that "the existence of any reasonable relationship to the preservation of a well-regulated militia was best determined from the facts of each individual case." Hale, 978 F.2d at 1020 (internal quotations omitted). To make this determination, the Hale court relied on Cases v. United States, 131 F.2d 916 (1st Cir. 1942), cert. denied, 319 U.S. 770, 63 S.Ct. 1431, 87 L.Ed. 1718 (1943), which the court noted "remains one of the most illuminating circuit opinions on the subject of 'military' weapons and the Second Amendment." Hale at 1019. The Cases court "carefully examin[ed] the principles and implications of the then recent Miller decision." Hale at 1020. The Cases court held:

Considering the many variable factors bearing upon the question it seems to us impossible to formulate any general test by which to determine the limits imposed by the Second Amendment but that each case under it, like cases under the due process clause, must be decided on its own facts and the line between what is and what is not a valid federal restriction pricked out by decided cases falling on one side or the other of the line.

Cases, 131 F.2d at 922. Defendants know of no federal circuit cases that have held otherwise.¹

On the facts of this case, defendants' alleged weapons conduct is protected by the Second Amendment because it is reasonably related to the preservation of a well-regulated militia. First, machine guns are "distinctly military arms". Hale, 978 F.2d at 1020 n.4; Cases, 131 F.2d at 922. Similarly, it is obvious that bombs, grenades, mortar balls and

¹ To the extent that Tomlin can be read as inconsistent with the fact-based approach of Miller and Cases, it must be overruled.

mines are typically associated with military use. Short-barreled weapons are not necessarily associated with military use. See Miller. A criminal might saw off a shotgun, for example, to conceal it during commission of a crime. In this case, however, defendant Kuehnoel is specifically charged with possessing military-issue, folding stock "survival rifles."² Such weapons are designed for use by soldiers who need to carry an accurate weapon in a small, lightweight pack. Thus all the weapons involved in this case are "distinctly military arms." In the alternative, if the Court has any doubt that this standard has been satisfied, defendants request an evidentiary hearing and appointment of a military expert in order to make a stronger showing.

Second, the conduct charged in counts 1-18 of the SSI "has some reasonable relationship to the preservation or efficiency of a well regulated militia." See Miller at 178. Defendants are included in the class of people defined by federal and state law as the "unorganized militia." On the federal level, the militia consists of "all able-bodied males at least 17 years of age and, except as provided in section 313 of title 32, under 45 years of age" who are U.S. citizens. 10 U.S.C. § 311. The militia consists of the organized militia -- National Guard and Naval Militia -- and the unorganized militia, everyone not a member of the organized militia. 10 U.S.C. § 311. Similarly, Washington statutes provide that:

The militia of the state of Washington shall consist of all able bodied citizens of the United States . . . residing within this state, who shall be more than eighteen years of age, and shall include all persons who are members of the national guard and the state guard, and said militia shall be divided into two classes, the organized militia and the unorganized militia.

RCW § 38.04.030 (1991). Washington's statute is not unusual. See Moncure, 34 Howard L.J. at 594-95 (citing various states' codes).

² Count 16 involves a "Harrington and Richardson, model M4, .22 caliber survival rifle." The search warrant return, filed on August 2, 1996, refers to this gun as "Prop U.S. Army." Count 17 involves an "Ithaca, model M6, survival weapon." The search warrant return refers to this gun as "Property US Army." Count 18 involves a Colt AR-15 semi-automatic rifle, model SP1 . . . with upper receiver having a barrel of less than 16 inches in length." The Colt is well-known as a military weapon.

In Miller, the Supreme Court explained that "well-regulated militia" meant to the Framers an "unorganized" civilian militia. "The sentiment of the time strongly disfavored standing armies; the common view was that adequate defense of country and laws could be secured through the Militia -- civilians primarily, soldiers on occasion." Miller, 307 U.S. at 179.

The signification attributed to the term Militia appears from the debates in the Convention, the history and legislation of Colonies and States, and the writings of approved commentators. *These show plainly enough that the Militia comprised all males physically capable of acting in concert for the common defense.* "A body of citizens enrolled for military discipline." And further, that ordinarily when called for service these men were expected to appear bearing arms supplied by themselves and of the kind in common use at the time.

Id. See also Levinson, 99 Yale L.J. at 646-47 ("There is strong evidence that 'militia' refers to all of the people, or at least all of those treated as full citizens of the community.").

Here, defendants are not merely eligible for service in the militia, they are specifically charged with organized militia activity. According to the indictment, the WSM conducted numerous organized meetings between January 1, 1995 and July 27, 1996. At these meetings, the WSM, among other things, allegedly made and possessed firearms, "prepared for armed confrontation with unnamed persons," SSI at 3, and trained WSM members in sniper detection, SSI at 5. The discovery includes allegations that the WSM prepared a military-style obstacle course for training, and practiced target shooting, survival skills, communications, and other military disciplines. The members are alleged to have organized themselves in a military style of leadership. Thus, the conduct charged clearly has "some reasonable relationship to the preservation or efficiency of a well regulated militia." Again, if the Court finds the pleadings insufficient to meet this standard, defendants request an evidentiary hearing to make a stronger showing.

Thus, counts 1-18 of the SSI must be dismissed because they violate the core protections of the Second Amendment.

3. In the Alternative, the Indictment Violates Defendants' Individual Rights to Bear Arms

In the alternative, if the Court concludes that defendants cannot make a sufficient showing that their conduct was reasonably related to the preservation or efficiency of a militia, defendants contend that counts 1-18 of the SSI violate their individual right to bear arms under the Second Amendment. That the Second Amendment confers such a right is clear from the following language: "... the right of *the people* to bear arms shall not be infringed." (emphasis added). Despite this language, the Ninth Circuit has recently held that "it is clear that the Second Amendment guarantees a collective rather than an individual right." Hickman v. Block, 81 F.3d 98, 100 (9th Cir. 1996) (internal quotation omitted). Nonetheless, defendants include this section of the brief to preserve their argument that the Ninth Circuit should reverse its position or, failing that, that the United States Supreme Court should reverse the Ninth Circuit.

Nowhere in the Hickman opinion does the court reference United States v. Verdugo-Urquidez, 494 U.S. 259, 265 (1990), in which a majority of the Supreme Court stated for the first time that the phrase "the people" in the Second Amendment should be read the same way as identical references to "the people" contained in the First, Fourth and other Amendments. Obviously, the First and Fourth amendments confer individual rights.

4. Even if the Court Upholds the Other Counts Under the Second Amendment, it Should Dismiss the Counts Based on 18 U.S.C. § 922(o).

The government may argue that the counts based on 26 U.S.C. § 5861 do not violate the Second Amendment because they involve only reasonable regulations of firearms. Even if the Court were to accept that argument, it cannot apply such reasoning to counts 2 and 13-15, which are based on 18 U.S.C. § 922(o). That statute imposes an outright ban on, not a mere regulation of, the possession and transfer of machineguns, and therefore violates the Second Amendment on its face. The history of § 922(o)'s passage is discussed in defendants' memorandum supporting their motion to dismiss the machinegun counts on

grounds other than the Second and Ninth Amendments.

In United States v. Lopez, -- U.S. --, 115 S.Ct. 1624, 131 L.Ed.2d 626 (1995), the Supreme Court struck down 18 U.S.C. § 922(q), which banned firearm possession in a school zone. The Fifth Circuit in Lopez had noted various parallels between §§ 922(q) and (o): both were passed hastily; neither had any legislative history suggesting a basis for federal jurisdiction; and both, unlike earlier firearms acts, "denounce[d] mere possession with no express tie either to interstate commerce or other federalizing element." Lopez, 2 F.3d 1342, 1356 (5th Cir. 1993). The unanimous Fifth Circuit panel went out of its way to note the possible application of the Second Amendment:

It is also conceivable that some applications of section 922(q) might raise Second Amendment concerns. Lopez does not raise the Second Amendment, and thus, we do not now consider it. Nevertheless, this orphan of the Bill of Rights may be something of a brooding omnipresence here.

Id. at 1364 n.46 (emphasis added).

The Ninth Circuit has yet to address the issue of whether § 922(o), on its face, violates the Second Amendment. In fact, no federal court has addressed this precise issue. The only federal case discussing the Second Amendment and § 922(o) is United States v. Hale, 978 F.2d 1016 (8th Cir. 1992). There, because the pro se petitioner did not raise a facial challenge, the court addressed only whether possession of a machinegun in that case was reasonably related to a well-regulated militia.

Thus, the Court should find that § 922(o) on its face violates the Second Amendment.

B. COUNTS 1-18 VIOLATE THE NINTH AMENDMENT, WHICH GUARANTEES A RIGHT TO SELF DEFENSE

The rights of Americans are not limited to those specified in the Constitution and Bill of Rights. "In the debates over ratification of the Bill of Rights, delegates commonly objected that it was impossible to list the rights of free men." Johnson, Beyond The Second

Amendment: An Individual Right To Arms Viewed Through The Ninth Amendment, 24 Rutgers L.J. 1, 7 (1992). The Ninth Amendment of the Constitution was therefore passed to specifically preserve these "unenumerated" rights:

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

U.S. Const. Amend. 9.

Since its passage, the Ninth Amendment has been construed periodically to establish substantive individual rights. See Barnett, Foreward: The Ninth Amendment and Constitutional Legitimacy, 64 Chi.-Kent L. Rev. 37, 57-58 (1988) (citing Court's list of 13 unenumerated rights). It is one of provisions creating a "penumbra" that supports a constitutional right of privacy. See e.g., Griswold v. Connecticut, 381 U.S. 479, 85 S.Ct. 1678, 14 L.Ed.2d 510 (1965); see also id. at 485-86 (Goldberg, J., concurring) (suggesting exclusive reliance on Ninth Amendment for constitutional right of privacy). Several commentators have recently taken the position that one of these unenumerated rights is the right of self-defense, which implicitly also covers all reasonable tools of self-defense.

The notion of a "natural" right of self-defense stems from the absence of any right to rely on society for one's defense. As noted in Bowers v. DeVito, 686 F.2d 616, 618 (7th Cir. 1982), "there is no constitutional right to be protected by the state against being murdered by criminals or madmen." Accordingly, "[o]ur common law supports an individual right to arms for self-defense, unimpaired by governmental restrictions." Johnson, 24 Rutgers L.J. at 8:

The Federalist Papers directly support derivation of an individual right to bear arms for self-defense from the Ninth Amendment. Federalist No. 28 describes an "original right to self-defense which is paramount to all positive forms of government." Several commentators have urged that certain rights predate government, and the Ninth Amendment preserves them.

Id. at 35. See also Blackstone's Commentaries, 143-44 (1766) ("self-defense, therefore, as it is justly called the primary law of nature, so it is not, neither can it be in fact, taken away

by the law of society"); Johnson, 24 Rutgers L.J. at 66 & n.209 (citing other English common law).

In Quilici v. Village of Morton v Grove, 695 F.2d 261, 279-80 (7th Cir. 1982), cert. denied, 464 U.S. 863 (1983), dissenting judge Coffey would have invalidated the local gun ordinance involved there on Ninth Amendment grounds. "A fundamental part of our concept of ordered liberty is the right to protect one's home and family against dangerous intrusions subject to criminal law." Id. at 280 (dissent). Judge Coffey noted that the Ninth Amendment has been utilized by litigants to argue for various personal rights, such as a right to privacy and abortion, to engage in sodomy, to wear long hair, to view obscene materials, and many other rights.

The right of self-defense and personal security has as much or more of a basis in natural law as these other rights. The Ninth Amendment therefore serves as a viable basis for protection of the right to possess arms necessary to effect that right. See also Van Alstyne, 43 Duke L. J. at 1248, n.43 ("An impressive number of authors . . . have sought to locate the right to keep and bear arms in the Ninth Amendment").

The right to weapons necessary for adequate self-defense cannot be limited to exclude the type of firearms and destructive devices involved here.

[W]e have started to identify and regulate "bad" guns. The approach seems strained. Ultimately, we are concerned about guns because they can be used to kill people. This capability is inherent in every gun, and it exposes the absurd notion that we are going to ban only the "bad" ones.

Johnson, 24 Rutgers L.J. at 78. Further, the reasonableness of actions taken in self-defense will necessarily depend on the extent of the violent threat. In this case, the government asserts that the defendants were preparing to repel an invasion of United Nations troops, which might be unlawfully supported by the federal government. Clearly, citizens would require substantial weapons to defend themselves against such a threat.

Thus, counts 1-18 of the indictment violate the Ninth Amendment and must be dismissed.

DATED this _____ day of _____, 199__.

Respectfully submitted:

David Zuckerman, WSBA #18221
Attorney for Defendant Gary Kuehnoel
On behalf of all defendants named in motion

CERTIFICATE OF SERVICE

I hereby certify that I forwarded a true copy of this pleading to the government by messenger, and to all defense counsel by U.S. mail, this _____ day of _____, 1996.

Stacey Bridges
Legal Assistant to David Zuckerman