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*by Steve Krulick, Senior Civics Columnist*

## Bearing (Up Under) Arms (Part 1)

*"Since the Second Amendment right 'to keep and bear Arms' applies only to the right of the state to maintain a militia and not to the individual's right to bear arms, there can be no serious claim to any express constitutional right of an individual to possess a firearm..." – United States v. Warin, US Court of Appeals, Sixth Circuit, Decided Feb. 4, 1976.*

On December 15, 1791, ten amendments to the US Constitution became law when Virginia became the ninth state to ratify the third through twelfth of the original twelve adopted by Congress in 1789; those ten are now known as the *Bill of Rights*. (BTW, their order had nothing to do with their importance, but only with the order of the original articles in the Constitution they modified or augmented.) Although Madison and Hamilton had argued in the *Federalist Papers* that such amendments were unnecessary – or even dangerous – Madison offered them as a sop to anti-Federalists to weaken them politically by placating their concerns over his strongly-centralized federal Constitution, which many of them saw as a threat to the rights, privileges, and powers of the previously sovereign states.

To understand the meaning and purposes behind these amendments, one must study the concerns and fears that led to them, the precedents they were built upon, and, perhaps most critically, the specific legal language employed by the elite, educated lawyers who wrote them, and what these terms meant to *those persons* in 1789. One must also dispel the myths and false assumptions that have accumulated through the years, due either to ignorance or subversive agendas.

I've already spent some time dealing with the part of the 1st Amendment concerning the right to petition representatives. As this is a local newspaper – and some might claim I have strayed from my originally-stated purpose of commenting on local issues in order to *ameliorate* our local community – I have tried to connect these bigger issues to the local (and even personal) level, making them more relevant to *you*.

As the *Journal* has tried to broaden its focus, so have I. And I have become increasingly convinced that many of our current problems – local and beyond – are due to a general ignorance of the principles and philosophies undergirding our republican form of democracy, including the subtle relationships between each citizen and each level of the collective body politic, the rights *and* obligations such relationships entail, and the necessary maintenance of the separation of powers (Montesquieu) and checks and balances (Locke) that permits continued self-governance and resists tyranny.

I have also become increasingly convinced that the experiment that began when Benjamin Franklin was asked by a Mrs. Powel at the close of the Constitutional Convention in Philadelphia on September 18, 1787, "Well, Doctor, what have we got… a republic or a monarchy?" ("A republic… if you can keep it" replied Franklin), has all but ended. There's plenty of evidence that our constitutional Executive branch was terminated under Texas skies on November 22, 1963, and was then buried when a politically-biased Supreme Judiciary jettisoned the Constitution on December 12, 2000, and arbitrarily decided a presidential election by a vote of 5-4. And, among other abrogations, our Legislative branch decided to render itself superfluous on October 11, 2002, when it gave up its unique power to declare war; since then, it has apparently decided no Executive high crime or misdemeanor merits any Constitutional scrutiny (impeachment is mentioned there six times as *the* remedy for over-reaching officials) or even a symbolic censure, no matter how long and odious the list of blatantly un-Constitutional misdeeds grows.

Dr. Lawrence Britt, a political scientist, studied the fascist regimes of Germany, Italy, Spain, Indonesia, and Chile. He found they all had 14 things in common, which he calls the "Fourteen Defining Characteristics of Fascism" (Free Inquiry Magazine, Spring 2003). A copy is online at **http://www.rense.com/general37/char.htm** and I challenge you to read them and not agree that the US is now well along the road to being a fascist state, if it hasn't already arrived. Gradually, and with well-timed shocks of fear and scapegoating, we've simply stood by as rights, protections, and legitimate powers have been ignored, denigrated, turned upside-down, or termed "quaint" (as the former US Attorney General called the Geneva Conventions' prohibitions of torture; Article VI of the US Constitution recognizes such signed treaties as "the supreme Law of the Land," Speedy Gonzales's ignorance thereof notwithstanding).

Now, I note with some trepidation that the Supreme Court is about to open up for review – and will likely overturn by mid-2008 – nearly 200 years of settled case law (including its own prior rulings) regarding the Militia Amendment of the Constitution, more popularly known as the "Second Amendment." Though the courts have consistently established, as former Solicitor General Erwin Griswold once wrote: "[T]hat the Second Amendment poses no barrier to strong gun laws is perhaps the most well-settled proposition in American Constitutional law," there has been a concerted effort by the NRA (and various pseudoscholars in their employ) to fog the public mind, and convince judges and legislators that the Founders meant something other than what they actually said in clear, legal terminology – it's about sharing collective *power*, and says *nothing* about guns!

That ignorance of 18th-century legal language and history (and two centuries of court precedence, such as *Hickman v. Block*, 1996: "We follow our sister circuits in holding that the Second Amendment is a right held by the states, and does not protect the possession of a weapon by a private citizen. Consulting the text and history of the amendment, the Court found that the right to keep and bear arms is meant solely to protect the right of the states to keep and maintain armed militia.") is so rampant that even some current Appellate and SCotUS judges have fallen for a bogus interpretation (fortunately, not all have: "[The Second Amendment] has been the subject of one of the greatest pieces of fraud, I repeat the word 'fraud,' on the American public by special interest groups that I have ever seen in my lifetime… [the NRA has] misled the American people and they, I regret to say, have had far too much influence on the Congress." Former Chief Justice Warren Burger, *The MacNeil-Lehrer NewsHour,* December 16, 1991).

Why is this important? Because if the Supreme Court can rewrite history, and what the words in the Constitution meant to its authors, then the Constitution is as good as dead, and we become a nation not of laws, but of the whim of ignorant or cynical men, and this will (if it hasn't already) percolate down to every level of government, so that we have no recourse before courts, legislatures, or magistrates… and that means tyranny or anarchy. In what promises to be my most controversial series since my discussion of the Pledge to the Flag, I will prove that the 2nd Amendment had only one purpose and meaning to its authors, which is not what you've probably been led to believe it means, and I will back that up (online) with a book's worth of evidence that I will challenge any hoplophiles to try to refute!