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I. INTRODUCTION

On September 30, 1996, Congress amended 18 U.S.C. § 922(g) by adding subsection (9), thereby making unlawful the possession of a firearm by a person who has been convicted of a misdemeanor domestic violence offense. Violations of this statute subject the defendant to a fine and/or imprisonment for up to ten years, and actual knowledge of the prohibitions in 18 U.S.C. § 922(g)(9) is not required.


2. For the relevant language of 18 U.S.C. § 922(g), as amended, see infra text accompanying note 72.

3. See 18 U.S.C. § 924(D)(2). This is the penalty provision for 18 U.S.C. § 922(g), and it says, “Whoever knowingly violates subsection ... (g) ... of section 922 shall be fined as provided in this title, imprisoned not more than 10 years, or both.”

4. 18 U.S.C. § 922(g)(9) does not contain a mens rea requirement. Rather, the mens rea requirement for violations of that statute is contained in 18 U.S.C. § 924(D)(2): “Whoever knowingly violates.” With apparent unanimity, courts have interpreted this “knowingly violates” language as requiring, not actual knowledge of the law, but knowledge of the facts underlying the offense (e.g., in the case of 18 U.S.C. § 922(g)(9), this would require only that the subject of the provision knew that he/she possessed a firearm). See Bryan v. United States, 524 U.S. 184, 192-93 (1998); United States v. Hutzell, 217 F.3d 966, 967-68 (8th Cir. 2000); United States v. Mitchell, 209 F.3d 319, 322 (4th Cir. 2000). This mens rea issue is entirely independent of the due process question, so it is not discussed any further in this Note.
Generally, when a statute does not require knowledge of the law, it is a well accepted rule that ignorance of the law is no excuse. But, according to the Supreme Court in Lambert v. California, the due process principles of notice and fair warning create an exception to that rule when the conduct made unlawful by a regulation is (1) malum prohibitum, and (2) "wholly passive," which means that the conduct must be neither an act nor the "failure to act under circumstances that should alert the doer to the consequences of his deed."

In United States v. Hutzell, the question arose as to whether the Lambert due process exception requires actual knowledge for a violation of 18 U.S.C. § 922(g)(9). The indictment in Hutzell was predicated on a misdemeanor domestic violence conviction that occurred prior to the enactment of 18 U.S.C. § 922(g)(9). While this fact does not change the overall analysis under Lambert, it arguably makes it more difficult to justify a conviction absent actual knowledge of the law. This is because, in Hutzell, after the defendant's misdemeanor domestic violence conviction, it was perfectly legal for him to possess firearms. Yet, without his knowledge, that possession suddenly became unlawful with the subsequent enactment of 18 U.S.C. § 922(g)(9). Thus, given the "long tradition of widespread lawful gun ownership by private individuals in this country," the facts in Hutzell seem to place on the defendant an unfair burden of knowing that his conduct was unlawful.

However, the Hutzell court held that the Lambert due process exception did not require actual knowledge of 18 U.S.C. § 922(g)(9). In so holding, the Eighth Circuit reasoned that the defendant's domestic violence conviction itself put him on notice of the potential for increased government regulation regarding his possession of firearms.

This Note concludes that, although the court in Hutzell reached the correct holding, the court's analysis is not of sufficient depth and clar-

7. "Malum prohibitum" refers to "[a]n act that is a crime merely because it is prohibited by statute, although the act itself is not necessarily immoral." Black's Law Dictionary 971 (7th ed. 1999). One can alternatively describe such an act as not blameworthy per se. Although the Lambert Court did not expressly state this requirement, it is implied from the fact that the unlawful conduct in Lambert (i.e., the failure to register as a felon) was clearly malum prohibitum. Furthermore, subsequent courts, including the United States Supreme Court, have acknowledged that whether the conduct was per se blameworthy was a factor in Lambert. See United States v. Freed, 401 U.S. 601, 608 (1971); Hutzell, 217 F.3d at 968.
8. 355 U.S. at 228.
9. 217 F.3d 966 (8th Cir. 2000).
11. See Hutzell, 217 F.3d at 968-69.
ity to be truly convincing. In leading up to such conclusion, this Note begins by detailing the due process exception set forth by the Supreme Court in Lambert. The Note then looks at cases dealing with a similar due process issue regarding 18 U.S.C. § 922(g)(8), which makes possession of firearms unlawful for persons against whom a domestic violence protection order is in effect. Such cases are important, because many of them are discussed and relied upon in the cases that the Hutzell court cites in support of its holding. Next, this Note turns to 18 U.S.C. § 922(g)(9) and the few cases that have dealt with the issue at stake in Hutzell. Then, the Note discusses Hutzell in detail, making clear the court’s reasoning. Finally, in Part III, this Note examines the shortcomings of the Hutzell opinion and suggests a more in-depth and convincing analysis.

II. BACKGROUND

A. The Lambert Due Process Exception

The key to determining whether the Due Process Clause of the Fifth Amendment requires actual knowledge of the law lies in the case of Lambert v. California. Lambert involved a defendant who was convicted under section 52.39 of the Los Angeles Municipal Code, which prohibited convicted felons from remaining in the City of Los Angeles for more than five days without registering. At the time of her arrest for this violation, the defendant in Lambert had been a resident of Los Angeles for seven years, during which time she had been convicted in Los Angeles of the crime of forgery, a felony in California, but had not registered under the Municipal Code. Thus, the issue as defined by the Court was “whether a registration act of this character violates due process where it is applied to a person who has no actual knowledge of his duty to register, and where no showing is made of the probability of such knowledge.”

The Lambert Court held that the defendant’s conviction violated the due process principles of notice and fair warning. In so holding, the Court acknowledged that “[t]he rule ‘that ignorance of the law will not excuse’ is deep in our law.” Nevertheless, it recognized that due process places certain limits on the exercise of a local government’s police power in defining offenses. Thus, the Court imposed a due process exception to the rule that ignorance of the law is no excuse, holding that for a conviction under section 52.39 of the Los Angeles

13. See id. at 226.
14. See id.
15. Id. at 227.
16. Id. at 228.
17. See id.
Municipal Code to stand, the prosecution must show “actual knowledge of the duty to register or proof of the probability of such knowledge and subsequent failure to comply.”

The requirements for application of the Lambert exception are two-fold: the prohibited conduct must be (1) “wholly passive,” and (2) malum prohibitum. As to the latter element, a determination that conduct is malum prohibitum must depend greatly on the common law. With respect to the first element, however, the Lambert Court distinguished “wholly passive” conduct from “the failure to act under circumstances that should alert the doer to the consequences of the deed.” This distinction means that if the violation is accompanied by (1) “any activity,” or (2) “circumstances which might move one to inquire as to” the existence of the regulation, then the conduct is not wholly passive, and the Lambert exception does not apply. Thus, only if a regulation criminalizes conduct that is both wholly passive and malum prohibitum will the due process principles of notice and fair warning require that a person have actual knowledge of the law in order to be convicted.

B. 18 U.S.C. § 922(g)(8) & Relevant Cases

Although this Note focuses on whether Lambert applies to a violation of 18 U.S.C. § 922(g)(9), it is relevant to note that an almost identical issue has been litigated in the context of 18 U.S.C. § 922(g)(8), which was enacted on September 13, 1994. Section 922(g)(8) makes it unlawful for anyone who is subject to a domestic violence protection order to possess a firearm. One significant difference between 18

18. See id. at 229.
19. Id. at 228.
20. See supra note 7.
22. This element is implied from the opinion. See id. at 229.
23. Id.
25. With the addition of subsection (8), the 18 U.S.C. § 922(g) reads as follows:

   It shall be unlawful for any person . . . (8) who is subject to a court order that (A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate; (B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and (C)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or (ii) 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 or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or
U.S.C. §§ 922(g)(8) and (g)(9) is that the former makes possession of a firearm unlawful only while the protection order is in effect, whereas the latter presumably makes such possession unlawful indefinitely. Thus, since a person who has been convicted of misdemeanor domestic violence arguably has less reason to think that his/her actions will be subject to continuing governmental scrutiny than does a person who is subject to a continuing protection order, a conviction under 18 U.S.C. § 922(g)(9) is perhaps more unfair absent actual knowledge of the law. Furthermore, the cases that address 18 U.S.C. § 922(g)(8) all involve protection orders that were issued after enactment of the federal statute, so these cases lack an analogy to the pre-enactment domestic violence conviction in Hutzell. However, these cases certainly merit discussion, for they involve many of the same due process issues as are discussed in this Note with regard to 18 U.S.C. § 922(g)(9).

In United States v. Wilson, the defendant’s wife obtained a plenary order of protection against the defendant on September 1, 1995. At no time subsequent to the issuance of this order was the defendant actually notified that his possession of a firearm was prohibited while the order remained in effect. On September 10, 1996, with the protection order still in effect, police found the defendant in possession of a shotgun, rifle, and handgun. As a result, the defendant was indicted and subsequently convicted for violating 18 U.S.C. § 922(g)(8).

On appeal to the Seventh Circuit, the defendant argued, among other things, that his due process rights under the Fifth Amendment had been violated because he lacked any notice that his possession of a firearm was prohibited. In summarily rejecting this due process argument, although it cited to the holding in Lambert, the Seventh Circuit did not attempt to analyze whether the elements of the Lambert due process exception were met. Instead, the Wilson court simply invoked the rule that “ignorance of the law is no defense to a criminal prosecution” and held that the defendant “has not shown that the present statute falls into an exception to this general rule, and the fact that he was unaware of the existence of [18 U.S.C.] § 922(g)(8) does not render his conviction erroneous.”

In a vigorous dissent in Wilson, Chief Judge Posner objected to the majority’s reliance on the maxim that ignorance of the law is no excuse, arguing instead that “[i]t is wrong to convict a person of a crime if he had no reason to believe that the act for which he was convicted

26. 159 F.3d 280, 284 (7th Cir. 1998).
27. See id. at 283-84.
28. See id. at 284-85.
29. See id. at 288-89.
30. Id. at 288.
31. Id. at 288-89 (citations omitted).
was a crime, or even that it was wrongful."32 According to this dissent, the defendant had no way of predicting that his possession of firearms might be prohibited, for the following reasons: (1) "[t]he law is *malum prohibitum*, not *malum in se*,"33 (2) "there is no indication that guns played any part in the" defendant's abuse of his wife,34 (3) 18 U.S.C. § 922(g)(8) is obscure and hard to discover,35 and (4) the judge did not tell the defendant that he was prohibited from possessing firearms for the duration of the protection order.36

Furthermore, in discussing whether the *Wilson* defendant had a reasonable opportunity to learn of the law, Judge Posner said the following:

> We want people to familiarize themselves with the laws bearing on their activities. But a reasonable opportunity doesn't mean being able to go to the local law library and read Title 18. It would be preposterous to suppose that someone from Wilson's milieu is able to take advantage of such an opportunity. If none of the conditions that make it reasonable to dispense with proof of knowledge of the law [are] present, then to intone "ignorance of the law is no defense" is to condone a violation of fundamental principles for the sake of a modest economy in the administration of criminal justice.37

Thus, Judge Posner concluded that the circumstances in *Wilson* presented a case much like that in *Lambert*, such that the due process rights of notice and fair warning required that the defendant's conviction be overturned.38

In *United States v. Baker*,39 several orders of protection had been issued against the defendant by various females. The earliest of these orders was issued in September 1996, and the latest was entered in June 1997.40 Each of these orders contained the express provision that "it is a federal violation to purchase, receive, or possess a firearm while subject to this order."41 Yet, on June 27, 1997, police found the defendant in possession of an assault rifle after he had accidentally shot himself with the weapon.42 The defendant was subsequently indicted and convicted of violating 18 U.S.C. § 922(g)(8).43

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32. *Id.* at 293 (Posner, C.J., dissenting).
33. *Id.* at 294 (emphasis omitted). Note that "*malum in se*" is defined as follows: "A crime or an act that is inherently immoral, such as murder, arson, or rape." *Black's Law Dictionary* 971 (7th ed. 1999). By comparison, recall that *malum prohibitum* refers to conduct that is wrong only because it is prohibited by law. *See* *Black's*, *supra* note 7, at 971.
34. 159 F.3d at 294-95.
35. *See id.* at 295.
36. *See id.* at 294.
37. *Id.* at 295.
38. *See id.* at 295-96.
39. 197 F.3d 211 (6th Cir. 1999).
40. *See id.* at 213-14.
41. *Id.* at 213.
42. *See id.* at 214.
43. *See id.*
On appeal, the defendant challenged his conviction on several grounds, including the trial court's refusal to instruct the jury that a conviction required the defendant to have known that his possession of firearms was prohibited while subject to a protection order.\footnote{44} The Sixth Circuit rejected this argument on the ground that the defendant had actual notice of the prohibition due to the specific warning to that effect in each protection order.\footnote{45} However, in dicta, the court noted that even absent such notice there would have been no due process violation: "The fact that [the defendant] had been made subject to a domestic violence protection order provided him with notice that his conduct was subject to increased government scrutiny... [Thus, he] cannot successfully claim a lack of fair warning with respect to the requirements of [18 U.S.C.] § 922(g)(8)."\footnote{46}

This same reasoning was the basis for the Fourth Circuit's decision in \textit{United States v. Bostic}.\footnote{47} In \textit{Bostic}, a domestic violence protective order had been issued against the defendant on January 28, 1997.\footnote{48} At no time did the defendant receive notice that he was prohibited from possessing a firearm while the order was in force. Then, in February 1997, police found several firearms in the defendant's residence.\footnote{49} As a result, the defendant was subsequently indicted and convicted of violating 18 U.S.C. § 922(g)(8).\footnote{50}

On appeal, the defendant's primary contention was that his conviction violated the notice and fair warning principles embodied in the Fifth Amendment.\footnote{51} Yet, the Fourth Circuit rejected this challenge, reasoning that the mere issuance of a domestic violence protection order against the defendant was notice enough: "By engaging in abusive conduct... which led to the entry of the Order, Bostic removed himself from the class of ordinary citizens... Like a felon, a person in Bostic's position cannot reasonably expect to be free from regulation when possessing a firearm."\footnote{52}

This notion, that the existence of a protection order provides its subject with sufficient notice that possession of a firearm may be subject to heightened regulation, is likewise borne out in \textit{United States v. Meade}.\footnote{53} While subject to a domestic violence protection order, the

\footnotesize{\textbf{References}}
\footnotesize{\begin{itemize}
    \item \footnote{44} See id. at 218.
    \item \footnote{45} See id. at 219.
    \item \footnote{46} Id. at 220.
    \item \footnote{47} 168 F.3d 718 (4th Cir. 1999).
    \item \footnote{48} See id. at 720.
    \item \footnote{49} See id. at 720-21.
    \item \footnote{50} See id. at 721.
    \item \footnote{51} See id. at 722.
    \item \footnote{52} Id.
    \item \footnote{53} 175 F.3d 215 (1st Cir. 1999).
\end{itemize}
defendant in *Meade* was found in possession of a firearm, and was subsequently convicted under 18 U.S.C. § 922(g)(8).54

On appeal, the defendant argued that *Lambert* required his conviction to be overturned based on a lack of notice and fair warning that his possession of a firearm was prohibited.55 Yet, the First Circuit rejected this argument, noting that “the [Supreme] Court has steadfastly resisted efforts to extend *Lambert*’s reach and has gone so far as to suggest that the *Lambert* dissent correctly characterized the majority opinion as ‘an isolated deviation from the strong current of precedents—a derelict on the waters of the law.’”56 True to this view, the court in *Meade* found that the defendant’s case did not meet the requirements for application of the *Lambert* exception:

The dangerous propensities of persons with a history of domestic abuse are no secret, and the possibility of tragic encounters has been too often realized. We think it follows that a person who is subject to such an order would not be sanguine about the legal consequences of possessing a firearm . . . .

In short, we do not believe that the prohibition of section 922(g)(8) involves conduct and circumstances so presumptively innocent as to fall within the narrow confines of the *Lambert* exception.57

Therefore, the *Meade* court held that the defendant’s conviction did not violate his due process rights.58

The Tenth Circuit has also weighed in on this issue, in *United States v. Reddick*.59 In *Reddick*, a domestic violence protection order was entered against the defendant in April 1998.60 While this order was still in effect, the defendant was found in possession of a firearm, and was subsequently convicted under 18 U.S.C. § 922(g)(8).61

On appeal to the Tenth Circuit, the defendant asserted that his conviction violated due process and must be overturned in accordance with *Lambert*, but the *Reddick* court rejected this argument.62 In so doing, the Tenth Circuit was persuaded by the holdings in *Meade*, *Bostic*, *Baker*, and *Wilson* that the protection order should have led the defendant to expect that he may be subject to heightened regulation regarding the possession of firearms.63

54. See id. at 217-18. The defendant in *Meade* was also convicted of violating 18 U.S.C. § 922(g)(9), but the First Circuit did not reach the due process issue in regard to that conviction.

55. See id. at 225.


57. Id. at 226 (citations omitted).

58. See id.

59. 203 F.3d 767 (10th Cir. 2000).

60. See id. at 769.

61. See id.

62. See id. at 770-71.

63. See id.
Clearly, the above cases demonstrate a trend of upholding convictions under 18 U.S.C. § 922(g)(8) without actual notice. However, that trend has not been unanimous. Rather, the trend was bucked by the United States District Court for the Northern District of Texas (within the jurisdiction of the Fifth Circuit) in United States v. Emerson. In Emerson, the defendant’s wife obtained a protection order against the defendant in September 1998. Subsequently, while the order was still in effect, police found the defendant in possession of a firearm, and he was indicted for violating 18 U.S.C. § 922(g)(8).

Prior to trial, the defendant filed a motion to dismiss the indictment. This motion made several arguments, one being that 18 U.S.C. § 922(g)(8) violated the defendant’s Fifth Amendment due process rights. Yet, unlike the First, Fourth, Sixth, Seventh, and Tenth Circuits, the district court in Emerson agreed with the defendant’s due process argument and dismissed his indictment accordingly. In so doing, the district court based its decision primarily on Judge Posner’s dissent in Wilson, thereby reasoning that 18 U.S.C. § 922(g)(8) violated the defendant’s due process rights to notice and fair warning because (1) it is an obscure provision; (2) the conduct that it criminalizes is malum prohibitum, not malum in se; and (3) no one actually informed the defendant of the law prohibiting his possession of a firearm. Therefore, although the trend is in favor of rejecting due process challenges to 18 U.S.C. § 922(g)(8), the issue is still subject to debate.

C. 18 U.S.C. § 922(g)(9) & Pre-Hutzell Cases

On September 30, 1996, Congress amended 18 U.S.C. § 922(g) by adding subsection (9). As amended, the statute provides as follows:

It shall be unlawful for any person . . . (9) who has been convicted in any court of a misdemeanor crime of domestic violence, to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or am-

64. 46 F. Supp. 2d 598 (N.D. Tex. 1999).
65. See id. at 599.
66. See id.
67. See id. at 598.
68. See id. at 611.
69. See id. at 613. It is important to note that neither United States v. Baker, 197 F.3d 211 (6th Cir. 1999), nor United States v. Meade, 175 F.3d 215 (1st Cir. 1999), had been decided when the Emerson decision came down. However, both United States v. Bostic, 168 F.3d 718 (4th Cir. 1999), and United States v. Wilson, 159 F.3d 250 (7th Cir. 1998), had already been decided. The Emerson court discussed Wilson and aligned itself with Chief Judge Posner’s dissent. The Emerson court did not discuss Bostic, presumably because that case came down less than two months before Emerson was decided.
70. 46 F. Supp. 2d at 612.
munition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.\textsuperscript{72}

One issue that has sprung from this amendment is whether the Due Process Clause of the Fifth Amendment requires that a person have actual knowledge of the prohibitions in 18 U.S.C. § 922(g)(9) when a violation of that statute is predicated on a misdemeanor domestic violence conviction that occurred prior to its enactment.

Facing this very issue in \textit{United States v. Beavers},\textsuperscript{73} the Sixth Circuit held that actual knowledge of the law is not required. In \textit{Beavers}, the defendant was convicted of misdemeanor domestic assault in 1995, and on November 20, 1997, two pistols and a shotgun were found in the defendant’s home.\textsuperscript{74} Although the defendant had no actual knowledge of 18 U.S.C. § 922(g)(9) as of November 20, he was subsequently indicted and convicted under that provision.\textsuperscript{75}

On appeal, the defendant in \textit{Beavers} argued that his conviction should be reversed based on the due process exception set forth in \textit{Lambert}, but the Sixth Circuit disagreed.\textsuperscript{76} In holding that the defendant’s conviction was not within the \textit{Lambert} exception, the Sixth Circuit relied on its own dicta in \textit{Baker},\textsuperscript{77} and on the reasoning of the First Circuit in \textit{Meade}:\textsuperscript{78}

As noted in \textit{Baker} and \textit{Meade}, domestic abuse is a well-known problem, and it should not surprise anyone that the government has enacted legislation in an attempt to limit the means by which persons who have a history of domestic violence might cause harm in the future. . . . When Beavers committed the domestic violence offense, he “removed himself from the class of ordinary and innocent citizens” who would expect no special restrictions on the possession of a firearm.\textsuperscript{79}

Thus, the court concluded that actual knowledge of the prohibitions of 18 U.S.C. § 922(g)(9) was not required for the defendant’s conviction to stand.\textsuperscript{80}

Likewise, the Fourth Circuit faced this same issue and reached a substantially similar conclusion in \textit{United States v. Mitchell}.\textsuperscript{81} The defendant in \textit{Mitchell} was convicted of a misdemeanor domestic violence offense in June 1996, and on July 20, 1998, police found a hand-

\begin{itemize}
\item \textsuperscript{72} 18 U.S.C. § 922(g).
\item \textsuperscript{73} 206 F.3d 706 (6th Cir. 2000), \textit{cert. denied}, 120 S. Ct. 1989 (May 15, 2000) (mem.).
\item \textsuperscript{74} \textit{See id.} at 708.
\item \textsuperscript{75} \textit{See id.}
\item \textsuperscript{76} \textit{See id.} at 709-10.
\item \textsuperscript{77} 197 F.3d 211 (6th Cir. 1999).
\item \textsuperscript{78} 175 F.3d 215 (1st Cir. 1999).
\item \textsuperscript{79} \textit{Beavers}, 206 F.3d at 710 (quoting \textit{United States v. Bostic}, 168 F.3d 718, 722 (4th Cir. 1999)).
\item \textsuperscript{80} \textit{See id.}
\item \textsuperscript{81} 209 F.3d 319 (4th Cir. 2000).
\end{itemize}
gun and ammunition in the defendant's residence. The defendant was then indicted and convicted under 18 U.S.C. § 922(g)(9).

On appeal, the defendant claimed to have had no knowledge that his possession of a firearm had become illegal, and thus that Lambert required that his conviction be reversed on due process grounds. While acknowledging that "the Lambert Court did hold that the Due Process Clause requires some minimum threshold notice to defendants," the Fourth Circuit noted that "Lambert's reach has been exceedingly limited." Then, citing to its holding in Bostic, the court stated the following:

In the instant case, Mitchell's conduct in assaulting his wife—the act that led to his misdemeanor domestic violence conviction—put Mitchell on sufficient notice. This court in United States v. Bostic rejected an analogous due process challenge to 18 U.S.C. § 922(g)(8) . . . . The [Bostic] court concluded, "By engaging in abusive conduct toward [his wife and child, the defendant] removed himself from the class of ordinary citizens" to the point where he could not "reasonably expect to be free from regulation when possessing a firearm." Based on this reasoning, the Mitchell court rejected the defendant's due process challenge.

Finally, two United States District Court cases are also relevant. In United States v. Willbern (decided within the jurisdiction of the Tenth Circuit), the defendant was convicted of misdemeanor battery of his girlfriend in 1993, and subsequently found in possession of a shotgun on February 9, 1999. He was then indicted under 18 U.S.C. § 922(g)(9).

The district court in Willbern rejected the defense that 18 U.S.C. § 922(g)(9) violated the defendant's due process rights of notice and fair warning. First of all, the district court concluded that the defendant had actual notice that he was prohibited from possessing firearms. However, in dicta, the court went on to find that even absent such actual notice, there would be no due process violation. In so holding, the Willbern court relied specifically on Mitchell, Meade, and Bostic in reasoning that the defendant's misdemeanor domestic violence offense sufficiently put him on notice that the government may

82. See id. at 321.
83. See id.
84. See id. at 323.
85. Id.
86. 168 F.3d 718 (4th Cir. 1999).
87. Mitchell, 209 F.3d at 323 (quoting Bostic, 168 F.3d at 722) (second alteration in original) (citations omitted).
88. See id. at 324.
90. See id. at *1.
91. See id.
92. See id. at *2.
93. See id.
further regulate his possession of firearms. Thus, the district court fell in line with the trend of rejecting such due process claims based on the Lambert principles of notice and fair warning.

However, the United States District Court in Nebraska (within the jurisdiction of the Eighth Circuit) went the other way on this very issue in United States v. Ficke. The defendant in Ficke was convicted of misdemeanor assault in connection with an incident of domestic violence in April 1994, and was found in possession of two shotguns and a rifle in September 1998. The defendant was then indicted under 18 U.S.C. § 922(g)(9).

In a motion to dismiss, the defendant argued that 18 U.S.C. § 922(g)(9) violated his due process rights of notice and fair warning as set forth in Lambert. But, in contrast to the above cases, the district court in Ficke agreed with the defendant and held that his case should be dismissed. In so holding, the court found persuasive the reasoning of the majority in Emerson and Judge Posner's dissent in Wilson. The Ficke court then concluded that because the defendant had no actual warning of 18 U.S.C. § 922(g)(9), and because he had virtually no way of knowing about that statute, his due process rights had been violated.

Thus, from all of the above cases, it is clear that the trend is to reject the application of Lambert to 18 U.S.C. § 922(g)(9) violations that are predicated on pre-enactment misdemeanor domestic violence convictions. This trend finds substantial support from the similar trend of rejecting such due process challenges to 18 U.S.C. § 922(g)(8). However, certain courts and dissenting judges continue to resist this trend. The majority in Emerson and Judge Posner's dissent in Wilson both concluded that the due process principles of notice and fair warning do require actual knowledge of 18 U.S.C. § 922(g)(8). Those opinions then persuaded the court in Ficke to dismiss an indictment under 18 U.S.C. § 922(g)(9) on the grounds that it violated the defendant's due process rights. Such resistance demonstrates that the due process issue, the subject of this Note, is a close one that is still subject to debate.

94. See id. at *3.
95. 58 F. Supp. 2d 1071 (D. Neb. 1999). It is important to note that Ficke came down prior to Hutzell, and is now effectively overruled by the Eighth Circuit's decision. But, the Ficke decision illustrates that the proper outcome of the particular issue in Hutzell is close enough to be debatable.
96. See id. at 1072.
97. See id.
98. See id. at 1073.
99. See id. at 1075-76.
100. 46 F. Supp. 2d 598 (N.D. Tex. 1999).
101. 159 F.3d 280 (7th Cir. 1998) (Posner, J., dissenting).
102. See Ficke, 58 F. Supp. 2d at 1075-76.
D. Hutzell

In March of 1996, Cody Hutzell pleaded guilty to a state charge of domestic abuse assault, a misdemeanor in Iowa. Over two years later, Mr. Hutzell fired a gun during an argument with his girlfriend and was subsequently charged with violating 18 U.S.C. § 922(g)(9). In the United States District Court for the Southern District of Iowa, Mr. Hutzell entered a conditional guilty plea subject to his motion to dismiss the indictment. This motion was denied.

On appeal to the Eighth Circuit, Mr. Hutzell maintained that his conviction was improper because he did not know that his possession of a firearm was prohibited, and because no one could be presumed to have had notice that such possession was prohibited. Specifically, Mr. Hutzell acknowledged the “common maxim, familiar to all minds, that ignorance of the law will not excuse any person, either civilly or criminally,” but argued that his case fell within the Lambert exception to that rule. The Eighth Circuit disagreed.

According to the court in Hutzell:

Lambert carves out a very limited exception to the general rule that ignorance of the law is no excuse. The Lambert principle applies, for instance, only to prohibitions on activities that are not per se blameworthy. Even assuming that this requirement is met here, Lambert is nevertheless unavailing to Mr. Hutzell if his lack of awareness of the prohibition was objectively unreasonable.

The court then explained why it found that Mr. Hutzell’s lack of awareness of 18 U.S.C. § 922(g)(9) was indeed objectively unreasonable. Citing to Mitchell for support, the court first reasoned that “an individual’s domestic violence conviction should itself put that person on notice that subsequent possession of a gun might well be subject to regulation.” Additionally, the Eighth Circuit stated that “it should not surprise anyone that the government has enacted legislation in an attempt to limit the means by which persons who have a history of domestic violence might cause harm in the future.” Furthermore, the Hutzell court reasoned that “the possession of a gun, especially by anyone who has been convicted of a violent crime, is . . . a highly regu-

103. See United States v. Hutzell, 217 F.3d 966, 967 (8th Cir. 2000).
104. See id.
105. See id.
106. See id.
107. See id. Note that Mr. Hutzell also argued that the district court erred in refusing to grant a downward departure at sentencing, which argument the Eighth Circuit rejected. See id. at 969.
108. Id. at 968 (quoting Barlow v. United States, 32 U.S. 404, 411 (1833)).
109. Id. (citations omitted).
110. 209 F.3d 319 (4th Cir. 2000).
111. Hutzell, 217 F.3d at 968.
112. Id. at 968-69 (quoting United States v. Beavers, 206 F.3d 706, 710 (6th Cir. 2000)).
lated activity, and everyone knows it." 113 Finally, the court also noted that 18 U.S.C. § 922(g)(9) "was the subject of considerable public scrutiny and discussion both before and after its enactment." 114

For all of the above reasons, the Eighth Circuit found that it was "simply disingenuous for Mr. Hutzell to claim that his conviction under [18 U.S.C.] § 922(g)(9) involved the kind of unfair surprise that the fifth amendment prohibits." 115 Thus, it held that the Lambert exception did not apply, and affirmed Mr. Hutzell's conviction. 116

Opposing the majority's opinion in Hutzell, Chief Judge Bennett wrote a lengthy and vigorous dissent in which he argued that the Lambert exception certainly applied to Mr. Hutzell's case. The mere extensiveness of this dissenting opinion illustrates the extent to which this issue is subject to debate.

According to Judge Bennett, the Lambert exception has four elements: (1) the defendant's conduct must be wholly passive; (2) the defendant's conduct must not be per se blameworthy; (3) circumstances must be absent that would otherwise alert the doer to the consequences of his deed; and (4) "the 'injustice' to the defendant of disposing of a 'knowledge of the law' requirement must not be outweighed by the benefit to the person the law is meant to protect." 117 As to the first element, Judge Bennett concluded that the mere possession of a firearm for the purposes of 18 U.S.C. § 922(g)(9) is wholly passive, because such conduct is "unaccompanied by any activity whatever." 118

As to the second element, Judge Bennett concluded that such possession of a firearm is not blameworthy per se, because "there is a long tradition of widespread lawful gun ownership by private individuals..." 119

113. Id. at 969.
114. Id.
115. Id.
116. See id.
117. Id. at 975. Judge Bennett gets his fourth requirement from an obscure quote in United States v. Freed, 401 U.S. 601, 610 (1971), that is entirely separate from that Court's discussion of Lambert. Furthermore, the Lambert Court neither expressly nor implicitly imposes such a requirement. Thus, I disagree that this balancing of interests is necessary to determining whether the Lambert exception applies.

Furthermore, note that Judge Bennett separates the "wholly passive" analysis from the issue of whether circumstances existed that should have alerted the defendant to the consequences of his deed. While the language in Lambert is somewhat ambiguous on this point, it seems more likely that the Lambert Court's understanding of "wholly passive" conduct requires a consideration of both of these elements together. According to the Court, "wholly passive" conduct is "unlike the commission of acts, or the failure to act under circumstances that should alert the doer to the consequences of his deed." Lambert, 355 U.S. at 228. From this description, it appears that the "circumstances" analysis cannot be separated from a determination of whether the conduct at issue is "wholly passive."

118. Hutzell, 217 F.3d at 976 (quoting Lambert, 355 U.S. at 229).
in this country.”119 Regarding the third element, because of the obscurity of the federal statute, and because Mr. Hutzell had continuously possessed the firearm from the time of his misdemeanor domestic violence conviction until his conviction without being notified that such possession had suddenly become unlawful, Judge Bennett found that there were no circumstances that would lead Mr. Hutzell to inquire into heightened regulation.120 Likewise, Judge Bennett flatly rejected the notion that Mr. Hutzell’s domestic violence conviction put him on such notice.121 Finally, as to the fourth element, Bennett observed that the purpose of 18 U.S.C. § 922(g)(9), taking guns out of the hands of domestic abusers, cannot be served unless adequate notice is given to the persons within the scope of the statute that their possession of firearms is prohibited.122 Since he felt that such adequate notice was not being provided, Judge Bennett concluded that the injustice of conviction under 18 U.S.C. § 922(g)(9) without a knowledge of the law requirement was greater than the benefits being served by doing so.123 Thus, Judge Bennett concluded that Mr. Hutzell’s case was clearly within the Lambert exception and that his conviction should have been dismissed.

III. ANALYSIS

The Eighth Circuit in Hutzell was correct in deciding that the Lambert due process exception does not apply to 18 U.S.C. § 922(g)(9). However, the court’s reasoning was not extensive enough to be truly convincing. In a typical case, a less than convincing opinion may be excusable, but Hutzell is not such a case. What makes Hutzell atypical is the conflict between the “long tradition of widespread lawful gun ownership by private individuals in this country”124 and 18 U.S.C. § 922(g)(9), which authorizes up to ten years’ imprisonment for the possession of a firearm, even without actual knowledge of the unlawfulness of such possession. Given this conflict, anything less than a thorough and convincing explanation as to how such an extensive deprivation of liberty is consistent with the defendant’s due process rights seems unacceptable. This is especially true in a case such as Hutzell, where the constitutional issue is a close one that is subject to debate.125 Therefore, this Note will analyze the facts of Hutzell in accor-

119. Id. at 976 (quoting Staples v. United States, 511 U.S. 600, 610 (1994)).
120. See id. at 976-77.
121. See id. at 977.
122. See id. at 978.
123. See id.
dance with the Lambert principles of notice and fair warning; it will identify why the opinion in Hutzell was not fully convincing; and it will suggest a more persuasive analysis.

A. Malum Prohibitum

Although this Note concludes that the Lambert due process exception does not apply to 18 U.S.C. § 922(g)(9), it is important to note that 18 U.S.C. § 922(g)(9) does meet the Lambert requirement that the unlawful conduct be malum prohibitum, as opposed to malum in se. This conclusion, which results from the Supreme Court's decision in Staples v. United States, has significant implications on the apparent fairness of Mr. Hutzell's conviction.

In Staples the defendant was convicted of violating 26 U.S.C. § 5861(d), which requires the registration of certain "firearms." The defendant's conviction was for the possession of an unregistered machine gun, which is a "firearm" for the purposes of 26 U.S.C. § 5861(d). The problem was that the gun was actually a semi-automatic that had either been modified or damaged in a way that gave it the characteristics of a machine gun. This was a crucial fact, because a semi-automatic is not a "firearm" for the purposes of 26 U.S.C. § 5861(d).

The defendant in Staples argued that he did not know that the weapon was a machine gun, thereby contending that he could not be liable for his failure to register it as such. The Government countered by arguing that any gun is a dangerous weapon and should lead a person to expect and inquire into heightened regulation requirements.

The Staples Court rejected the Government's argument and held that 26 U.S.C. § 5861(d) requires knowledge of the characteristics that make the gun a "firearm." In so holding, the Court made clear that simple possession of a gun is not blameworthy per se:

126. See supra text accompanying notes 19-23 for the full test regarding whether the Lambert due process exception applies.
128. See id. at 604.
130. See Staples, 511 U.S. at 603.
132. See Staples, 511 U.S. at 603.
133. See id.
134. See id. at 609-10.
135. See id. at 618-19.
The fact remains that there is a long tradition of widespread lawful gun ownership by private individuals in this country. . . . Here, the Government essentially suggests that we should interpret [26 U.S.C. § 5861(d)] under the altogether different assumption that "one would hardly be surprised to learn that owning a gun is not an innocent act." That proposition is simply not supported by common experience.

... Despite their potential for harm, guns generally can be owned in perfect innocence. Of course, we might surely classify certain categories of guns—no doubt including the machineguns, sawed-off shotguns, and artillery pieces that Congress has subjected to regulation—as items the ownership of which would have the same quasi-suspect character [argued for by the government] . . . . But precisely because guns falling outside those categories traditionally have been widely accepted as lawful possessions, their destructive potential, while perhaps even greater than that of some items we would classify along with narcotics and hand grenades, cannot be said to put gun owners sufficiently on notice of the likelihood of regulation to justify interpreting § 5861(d) as not requiring proof of knowledge of a weapon's characteristics.

Understandably, the court in Hutzell did not address the issue of blameworthiness,137 because such a discussion would not have further supported the court's holding. However, since possession of a firearm under 18 U.S.C. § 922(g)(9) is not blameworthy per se, one certainly finds it more difficult to convincingly argue that a conviction and potential ten-year prison term for such possession is in accordance with the Lambert principles of notice and fair warning absent actual knowledge of the law. Only a full and complete analysis of the remaining element of the Lambert test, along with its corresponding sub-elements, sufficiently overcomes this difficulty.

B. Wholly Passive Conduct

Along with the malum prohibitum requirement, the Lambert Court made clear that its due process exception applies only in cases where the prohibited conduct is wholly passive.138 Although Lambert did not define "wholly passive" conduct per se, the Court specifically excluded from its meaning (1) "the commission of acts," and (2) "the failure to act under circumstances that should alert the doer to the consequences of his deed."139 Thus, if the regulation at issue prohibits either of these types of conduct, then the Lambert due process exception does not apply.

136. Id. at 610-12 (citations omitted).
137. Interestingly, though, the Hutzell court said, "Even assuming that this requirement [that the conduct be malum prohibitum] is met here, Lambert is nevertheless unavailing to Mr. Hutzell if his lack of awareness of the prohibition was objectively unreasonable." Hutzell, 217 F.3d at 968 (emphasis added). Whether the Eighth Circuit intended to imply that the possession of a firearm for the purpose of 18 U.S.C. § 922(g)(9) may be blameworthy per se is unclear. This would be clearly mistaken in light of Staples.
138. Lambert, 355 U.S. at 228.
139. Id.
In *Hutzell*, the Eighth Circuit did not address the issue of whether possession of a firearm for the purposes of 18 U.S.C. § 922(g)(9) is an act. Instead, the court jumped to the second element of the "wholly passive" test and held that, due to Mr. Hutzell's domestic violence conviction, circumstances existed that should have led him to inquire into the possibility of regulation.\(^\text{140}\)

In an attempt to demonstrate more persuasively that the *Lambert* exception does not apply to 18 U.S.C. § 922(g)(9), the following discussion pursues a more in-depth analysis of the wholly passive test than did the court in *Hutzell*. This section will first show that possession of a firearm under 18 U.S.C. § 922(g)(9) fails both elements of the *Lambert* "wholly passive" test. It will then expand on the reasoning in *Hutzell* regarding the "circumstances" element, so as to better illustrate that the outcome in *Hutzell* is consistent with the intentions of the *Lambert* Court.

1. *Is the Prohibited Conduct an Act?*

The possession of a firearm for the purposes of 18 U.S.C. § 922(g)(9) is an act. According to the Model Penal Code, "Possession is an act . . . if the possessor knowingly procured or received the thing possessed or was aware of his control thereof for a sufficient period to have been able to terminate his possession."\(^\text{141}\) Several states have adopted similar statutory language, but have gone even further, specifying that possession is a *voluntary* act.\(^\text{142}\) Likewise, the federal

\(^{140}\) See *Hutzell*, 217 F.3d at 968-69.
\(^{141}\) Model Penal Code § 2.01(4) (1962) (emphasis added).
\(^{142}\) See, e.g., Ariz. Rev. Stat. Ann. § 13-105(31) (West Supp. 2000) ("Possession means a voluntary act if the defendant knowingly exercised dominion or control over property."); Haw. Rev. Stat. Ann. § 702-202 (Michie 1993) ("Possession is a voluntary act if the defendant knowingly procured or received the thing possessed or if the defendant was aware of the defendant's control of it for a sufficient period to have been able to terminate the defendant's possession"); 720 Ill. Comp. Stat. Ann. 5/4-2 (West 1992) ("Possession is a voluntary act if the offender knowingly procured or received the thing possessed, or was aware of his control thereof for a sufficient time to have been able to terminate his possession."); Mo. Ann. Stat. § 562.011(3) (West 1999) ("Possession is a voluntary act if the possessor knowingly procures or receives the thing possessed, or having acquired control of it was aware of his control for a sufficient time to have enabled him to dispose of it or terminate his control."); Mont. Code Ann. § 45-2-202 (1999) ("Possession is a voluntary act if the offender knowingly procured or received the thing possessed or was aware of his control thereof for a sufficient time to have been able to terminate his control."); N.H. Rev. Stat. Ann. § 626:1(II) (1996) ("Possession is a voluntary act if the possessor knowingly procured or received the thing possessed or was aware of his control thereof for a sufficient time to have been able to terminate his possession."); Ohio Rev. Code Ann. § 2901.21(D)(1) (Anderson 1999), as amended by Act of April 11, 2000, No. 318, 2000 Ohio Legis. Bull. [Vol. 80:103]
courts have recognized that possession can be a voluntary act under both state and federal law.\textsuperscript{143} The most relevant of these federal decisions is \textit{United States v. Jester},\textsuperscript{144} which involved a defendant convicted under 18 U.S.C. § 922(g)(1)—a provision that makes it illegal for a convicted felon to possess a firearm. According to the court in \textit{Jester}, 18 U.S.C. § 922(g)(1) "is triggered only when the felon commits the volitional act of possessing a firearm."\textsuperscript{145}

The above statutory and case law makes clear that the possession of a firearm is legally defined as a voluntary act. As a result, because the \textit{Lambert} Court described wholly passive conduct to exclude the commission of an act, the \textit{Lambert} due process exception is absolutely barred from applying to 18 U.S.C. § 922(g)(9).

This conclusion provides a justification for refusing to apply the \textit{Lambert} exception that is entirely separate and independent from the justification proffered by the court in \textit{Hutzell} (i.e., that Mr. Hutzell's domestic violence conviction should have alerted him to the possibility of regulation). Having developed this justification from the language of the \textit{Lambert} Court itself, one certainly begins to see that application of the \textit{Lambert} exception to 18 U.S.C. § 922(g)(9) would not be consistent with the intentions of the \textit{Lambert} Court. This deduction gains strength in the discussion that follows.

\section*{2. Do Circumstances Exist Which Should Lead One to Inquire as to the Consequences of the Conduct?}

The court in \textit{Hutzell} held that the \textit{Lambert} exception did not apply because the defendant's lack of awareness regarding the prohibitions set forth in 18 U.S.C. § 922(g)(9) was "objectively unreasonable" in light of his misdemeanor domestic violence conviction.\textsuperscript{146} According to the Eighth Circuit, "[I]t should not surprise anyone that the government has enacted legislation in an attempt to limit the means by which persons who have a history of domestic violence might cause

\begin{itemize}
\item Possession is a voluntary act if the possessor knowingly obtains or receives the thing possessed or is aware of his control of the thing for a sufficient time to permit him to terminate his control.
\item Possession is an act... if the possessor knowingly procured or received the thing possessed or was aware of his control thereof for a sufficient period to have been able to terminate his possession.
\end{itemize}

\textsuperscript{143} See United States v. Jester, 139 F.3d 1168, 1170 (7th Cir. 1998) (recognizing possession of a firearm as a volitional act for purposes of 18 U.S.C. § 922(g)(1)); United States v. Clay, 495 F.2d 700, 705 (7th Cir. 1974) (recognizing that possession is a voluntary act under Illinois law); Gilley v. Collins, 968 F.2d 465, 468-69 (5th Cir. 1992) (recognizing that possession is a voluntary act under Texas law).
\textsuperscript{144} 139 F.3d 1168 (7th Cir. 1998).
\textsuperscript{145} Id. at 1170 (emphasis added).
\textsuperscript{146} See \textit{Hutzell}, 217 F.3d at 968-69.
harm in the future."\textsuperscript{147} In support of this assertion, the \textit{Hutzell} court stated that "the possession of a gun by anyone who has been convicted of a violent crime is . . . a highly regulated activity, and everyone knows it."\textsuperscript{148} Likewise, the court noted the high level of media attention devoted to domestic violence issues on a regular basis, and the high degree of public scrutiny that accompanied the enactment of 18 U.S.C. § 922(g)(9).\textsuperscript{149} The court then concluded that, in light of these "social circumstances, we believe that it is simply disingenuous for Mr. Hutzell to claim that his conviction under 18 U.S.C. § 922(g)(9) involved the kind of unfair surprise that the fifth amendment prohibits."\textsuperscript{150} Therefore, it found that the \textit{Lambert} exception did not apply.

On their face, the social circumstances cited by the court in \textit{Hutzell} hardly make it obvious that Mr. Hutzell was "objectively unreasonable" in not knowing about 18 U.S.C. § 922(g)(9). Yet, the court's reasoning consisted of no more than a simple statement of those circumstances. As such, it is not entirely clear from the court's opinion in \textit{Hutzell} whether the outcome in that case is consistent with the principles of notice and fair warning as set forth in \textit{Lambert}. Additional analysis is therefore necessary.

\textit{Lambert} involved a statute that required all convicted felons to register with the City of Los Angeles if they were to remain in the city for more than five days.\textsuperscript{151} The Court said, "Where a person did not know of the duty to register and where there was no proof of the probability of such knowledge, he may not be convicted consistently with due process."\textsuperscript{152} For the following reasons, the \textit{Lambert} Court concluded that there was no such probability of actual knowledge:

\begin{quote}
[C]ircumstances which might move one to inquire as to the necessity of registration are completely lacking. At most the ordinance is but a law enforcement technique designed for the convenience of law enforcement agencies through which a list of the names and addresses of felons then residing in a given community is compiled. The disclosure is merely a compilation of former convictions already publicly recorded in the jurisdiction where obtained.\textsuperscript{153}
\end{quote}

According to this language, the standard for satisfying the due process principles of notice and fair warning is not a strict one. It seems that the \textit{Lambert} Court was looking for \textit{any} circumstance that \textit{might} lead a person to consider the potential for heightened regulation,\textsuperscript{154} and the Court's language indicates that an underlying governmental purpose

\begin{footnotes}
147. \textit{Id.} (quoting United States v. Beavers, 206 F.3d at 706, 710 (6th Cir. 2000)).
148. \textit{Id.} at 969.
149. \textit{See id.}
150. \textit{Id.}
152. \textit{Id.} at 229-30.
153. \textit{Id.} at 229 (emphasis added).
\end{footnotes}
beyond the mere convenience of law enforcement agencies may suffice as such a circumstance.

Under the Lambert standard, 18 U.S.C. § 922(g)(9) certainly passes constitutional muster without requiring actual knowledge of the law. As the Hutzell court indicated, the primary governmental interest underlying 18 U.S.C. § 922(g)(9) was to prevent the escalation of domestic violence by known offenders. Clearly, this is a purpose that goes beyond providing mere convenience to police. Furthermore, whereas the regulation in Lambert was not supported by any circumstances that could possibly justify an inference that the defendant should have known of the regulation, the Hutzell court identified three such circumstances: (1) the prevalence of gun regulations directed at violent offenders; (2) the extensive media attention directed at domestic violence on a regular basis; and (3) the extensive public scrutiny received by 18 U.S.C. § 922(g)(9) when it was enacted. Certainly it can be said that these circumstances might lead a person who has been convicted of a crime of domestic violence to consider the potential for heightened firearm regulation. Therefore, since this seems to be all that Lambert requires for a conviction to be upheld without actual knowledge of the law, the outcome in Hutzell is plainly consistent with the Lambert due process principles of notice and fair warning.

IV. CONCLUSION

The principle is well-established that ignorance of the law is no excuse. However, when a law regulates conduct that has a long history of being perfectly legal in many circumstances, such as the possession of firearms, it becomes more difficult to gauge the fairness and propriety of a conviction under such a law unless the prohibition was actually known to the defendant. This assertion seems especially true when the law exacts a harsh punishment. Therefore, the question in such cases is whether the apparent unfairness rises to the level of violating the defendant's due process rights, and anything less than a convincing judicial answer would seem to lack integrity.

Realistically, in Hutzell, it is difficult to look at the facts and conclude unquestionably that Mr. Hutzell's conviction without actual knowledge of the law was "fair." However, the standard for determining fairness is not, "I know it when I see it." Rather, the legal mea-

155. See Hutzell, 217 F.3d at 968-69.
156. See supra text accompanying note 153.
157. See Hutzell, 217 F.3d at 969.
158. See id.
159. See id.
160. See Lambert, 355 U.S. at 228.
surement of what is fair under the Due Process Clause of the Fifth Amendment lies in the Supreme Court's interpretations of that Clause. Upon in-depth analysis, it is clear that the outcome in *Hutzell* is consistent with the Supreme Court's leading case regarding due process and ignorance of the law. As such, even though Mr. Hutzell did not know that 18 U.S.C. § 922(g)(9) suddenly made it unlawful for him to possess a firearm, his conviction under that statute must be deemed fair.

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