Allan J. Mayer

Attorney-at-Law

To the Honorable Judges of the 9th Circuit Court of Appeals Who Will Be Sitting As the Merits Panel On the Peruta Case
95 7th Street
San Francisco, CA 94119-3939

Re: Ninth Circuit Court of Appeals
Edward Peruta, et al v. County of San Diego et al; Docket # 10-56971

Forward

This letter is written as a Friend of the Court. It is a suggestion to Aid this Court by the use of empirical statistical analysis as relevant to resolving the 2nd Amendment issues presented.

Honorable Judges

Introduction

This case, Peruta, focuses directly and only on one issue: the State of California's statue and the multiple interpretations and applications of the county's and city's ordinances (the City of San Luis Obispo ordinance) [See attachment "att" #1] with regard to a persons 2nd Amendment right to carry a hand gun concealed.

There is empirical knowledge in the form of statistics from 41 (att #2) other states that may be relevant on this one issue.

Preamble

I am writing this letter to you as truly a friend of the court I am not a member of the NRA or the CR&PA nor have I received any compensation for writing this letter. This letter will not contain any law pertaining to the legal issues (2nd Amendment) in these cases.

I am familiar with both of the judges' opinions below, the two declarations of the experts Mr. Zimring for defendant and Mr. Moody for plaintiff submitted by the parties in Peruta below, and the oral argument in DC vs. Heller in the United States Supreme Court (see page 78:3 (att #3)).

I was admitted in New York in 1959 and in California and the 9th Circuit in 1995. My practice is devoted to pro bono (att #4) and arbitration. However, since the 9th Circuit decision in Credit

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Suisse v. Grunwald 400F3d119, I have been interested in the interrelationship between the State of California and the United States Constitution.

Are Facts Required To Make A decision Herein?

There are those that advocate after Heller and McDonald that this court should rule that self defense is the only prerequisite for the issuance of a Carry Concealed Weapon's Permit (CCW). (See below, page 2, para #A for other standards, such as not being a felon etc.)

There are others such as the experts for the Plaintiff, Mr. Moody and for the Defendant, Mr. Zimring who believe that some facts are required in addition to the law espoused by the Supreme Court.

There are facts in the form of statistics, from forty-one (41) other states, (att 5 that maybe relevant - if facts are required to decide this case.

Suggestion to the Court

What I am asking the court to do (in the form of a Brandeis Brief (att #6)) is to require the parties to provide certain empirical information in the form of statistics to this court as follows:

1. The names of all of the states over the last 10 years that have issued carry concealed weapon (CCW) permits without requiring the applicants to state that they had NEED except generally stating self defense for a permit. These are called, "Shall Issue States".

   ~~#~~ A There are about 41 of these "Shell Issue States" and 4 states that have no laws with regard to carrying a hand gun concealed. The issuance of these CCW permits in "Shall Issue States" is based upon the fact that the person was not insane, a felon, nor committed certain misdemeanors, and did not have a restraining order lodged, and passed a True & False gun (deadly force etc.) law test and showed some proficiency in the handling of a pistol.

2. The amount of CCW permits issued in each of these states under the above criteria yearly.

3. The amount and percentage of CCW permits taken away yearly by any Governments' actions either by a court or by administrative action due to some behavior by a permittee in (Shall Issue States).

4. The name of any of these (above) States that changed its CCW issuance laws and/or procedures to enact a more stringent law and/or procedure which restricted the issuance of CCW permits.

5. The name of any of these (above) States that changed its CCW issuance laws and/or procedures to enact a less stringent law and/or procedure with respect to the issuance of CCW permits.

6. The name of any of these States that did away with permits unless requested by a permittee who would wish these permits because of personal reasons such as the permits recognition in other states.

During the argument in DC vs. Heller (att #3) there was some colloquy between Mr. Justice Sutter and the attorney for Heller (Gura) about statistics concerning gun murders in DC, however Mr. Justice Scalia interrupted by stating "all the more reason to allow a homeowner to have a gun" and the statistics discussion ended (att #3). Justice Scalea indicated the need for this type of statistics in evaluating 2nd Amendment Issues.

Judicial Notice

The legal basic of the inclusion of these statistics is that an appellate court can take judicial notice of facts contained in official government records (att 3)

The question for the Court is: are these empirical facts/statistics relevant?

Did these no need permittees (who state, "I wish the CCW permit for self defense") in "Shall Issue States" abuse their right/privilege by acting in any manner which led any authority to revoke their CCW permit?

One way to ascertain the relevance of these statistics in Peruta is to read the declaration of the Plaintiff's expert, Carlisle E. Moody dated October 13, 2010, and the declaration of Defendant's expert, Franklin E. Zimring dated September 30, 2010, submitted to the Peruta district court and the colloquy in Heller (att #3).

This court can draw its own conclusion based on the percentage of permittees (if any) who abuse there CCW permits rather than the conclusion of the parties' experts.

Conclusion

My request is that this court should look into what has been the history of these law-abiding citizens after they have acquired permits in "Shall Issue States" that do not require a NEED except self defense in their CCW statute.

The Friend of the Court

Allan J Mayer

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CERTIFICATE OF SERVICE

I, the undersigned, am a citizen of the United States and am at least eighteen years of age. My business address is 1650 El Cerrito Ct. San Luis Obispo, CA 93401.

I am not a party to the action set forth in the within letter. I have caused the service of the above letter upon the parties set forth above by United States mail by depositing the aforesaid letter and exhibits in a postpaid envelope at the post office in San Luis Obispo at Marsh Street.

I declare under penalty of perjury that they foregoing is true and correct. Executed on _____ , 2012.

Allan J. Mayer
Attorney Pro Bono and Amicus Curie
CALF Bar# 169162

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San Luis Obispo CCW Ordinance

CCW Permit Issues

Private Citizen

- Investigation & Processing fee $330.30 (plus $10 per fingerprint card*) *no longer use fingerprint cards. Cost of live scan s $32).

$330.30
32.00
150.00
$512.30

- Psychological exam and background screening at applicant's expense, not to exceed $150.

?

- Must be a resident of City of San Luis Obispo.

- Must demonstrate a clear and present danger to life or safety.

"Clear and present danger" as defined in a 1st Amendment case.

See Feiner v. New York
340 US 315 (1/15/51)

- Must provide proof of insurance in the amount of $300,000 naming the City as insured, for any harm which maybe caused by the licensee's possession and/or use of weapon

Why?

§ 818.4. Issuance, denial, suspension or revocation of permit, license, or similar authorization

A public entity is not liable for an injury caused by the issuance, denial, suspension or revocation of, or by the failure or refusal to issue, deny, suspend or revoke, any permit, license, certificate, approval, order, or similar authorization where the public entity or an employee of the public entity is authorized by enactment to determine whether or not such authorization should be issued, denied, suspended or revoked.

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Wikipedia,

Forty-*

Thirty-nine U.S. states have passed "shall issue" concealed carry legislation of one form or another. In these states, law-abiding citizens (usually after giving evidence of completing a training course) may carry handguns on their person for self-protection. Other states and some cities such as New York may issue permits. Only Illinois, Wisconsin* and the District of Columbia have explicit legislation forbidding personal carry. Vermont, Arizona, and Alaska do not require permits to carry concealed weapons.

although Alaska retains a shall-issue permit process for reciprocity purposes with other states. Similarly, Arizona retains a shall-issue permit process,[23] both for reciprocity purposes and because permit holders are allowed to carry concealed handguns in certain places (such as bars and restaurants that serve alcohol) that non-permit holders are not.[24]

* In November 2011 Wisconsin passed a "shall issue" permit process law.

FRAP 48. MASTERS

(a) **Appointment; Powers.** A court of appeals may appoint a special master to hold hearings, if necessary, and to recommend factual findings and disposition in matters ancillary to proceedings in the court. Unless the order referring a matter to a master specifies or limits the master's powers, those powers include, but are not limited to, the following:

(1) regulating all aspects of a hearing;

(2) taking all appropriate action for the efficient performance of the master's duties under the order;

(3) requiring the production of evidence on all matters embraced in the reference; and

(4) administering oaths and examining witnesses and parties.

(b) Compensation. If the master is not a judge or court employee, the court must determine the master's compensation and whether the cost is to be charged to any party.

(As amended Dec. 1, 1994; May 11, 1998, eff. Dec. 1, 1998.)

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the right. In the Fifth Circuit, for example, we have the Emerson decision now for seven years, and the way that that court has examined the Second Amendment when they get these felon and possession bans and drug addict and possession challenges, what they say is, these people simply are outside the right, as historically understood in our country. And that's a very important aspect to remember, that the Second Amendment is part of our common law tradition, and we look to framing our practices in traditional understandings of that right to see both the reasonableness of the restrictions that are available as well as the contours.

JUSTICE SOUTER: Can we also look to current conditions like current crime statistics?

MR. GURA: To some extent, Your Honor, but we have certainly --

JUSTICE SOUTER: Well, can they consider the extent of the murder rate in Washington, D.C., using handguns?

MR. GURA: If we were to consider the extent of the murder rate with handguns, the law would not survive any type of review, Your Honor.

JUSTICE SCALIA: All the more reason to allow a homeowner to have a handgun.

MR. GURA: Absolutely, Your Honor.

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THE TRIBUNE

SAN LUIS OBISPO COUNTY, CALIF.

SATURDAY, APRIL 5, 2003

• San Luis Obispo attorney **Allan J. Mayer** received a plaque from the **San Luis Obispo Bar Association** at its March meeting recognizing the time he has volunteered performing mediations and arbitrations for the association and the Superior Court.

"He came out from New York and volunteered enormous amounts of time to mediations, arbitrations and settlement conferences for the court and in many cases did the work pro bono," said **Don Ernst,** immediate past president of the local Bar Association. "We wanted to give him something to thank him for doing that."

Mayer, 72, practiced law in New York prior to moving to San Luis Obispo and passing the California Bar in 1994.

ARTICLE II. JUDICIAL NOTICE

Rule 201. Judicial Notice of Adjudicative Facts

(a) **Scope of rule.** This rule governs only judicial notice of adjudicative facts.

(b) **Kinds of facts.** A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(c) **When discretionary.** A court may take judicial notice, whether requested or not.

(d) **When mandatory.** A court shall take judicial notice if requested by a party and supplied with the necessary information.

(e) **Opportunity to be heard.** A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

(f) **Time of taking notice.** Judicial notice may be taken at any stage of the proceeding.

(g) **Instructing jury.** In a civil action or proceeding, the court shall instruct the jury to accept as conclusive any fact judicially noticed. In a criminal case, the court shall instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed.

Brandeis Brief. As counsel in *Muller v. Oregon* (1908), Louis D. *Brandeis, then a well-known attorney and social activist, submitted a lengthy *brief supporting the constitutionality of an Oregon statute that limited the hours per day that women could work in laundries and other industries. The Brandeis brief led to important changes in legal analysis and Supreme Court litigation.

The *Muller* brief devoted a mere two pages to discussion of legal issues; the remaining 110 pages presented evidence of the deleterious effects of long hours of labor on the "health, safety, morals and general welfare of women." This evidence was culled from medical reports, psychological treatises, statistical compilations, and conclusions of various legislative bodies and public committees by Brandeis's sister-in-law, Josephine Goldmark, and several of her colleagues from the National Consumers' League. Surprisingly, the conservative David J. *Brewer, who wrote for the majority in *Muller*, noted the contribution of the brief favorably.

The Brandeis brief was unprecedented. Brandeis used it to demonstrate that there was a reasonable basis for the Oregon statute. In several prior decisions, most notably *Lochner v. New York (1905), conservative Supreme court justices were only too willing—as Brandeis and other Progressives complained—to impose their own beliefs about what constituted reasonable legislation. The *Muller* brief's analysis was consonant with the fact-oriented *"sociological jurisprudence" of the Progressive era. It forced the Court to consider data that state legislators employed in drafting reform laws.

The success of the Brandeis brief led to subsequent efforts by Brandeis and other lawyers to support of a wide range of economic legislation. Even lawyers representing interests opposed to Progressive regulation used the Brandeis techniques to attack such laws. The Brandeis brief has also seen service in contexts far removed from economic regulation and thus has become a staple of litigation before the Supreme Court.

(See also GENDER, PROGRESSIVISM.)

John W. Johnson