

1 COLLECTIVE RIGHT OR AN INDIVIDUAL RIGHT AND WHETHER OR NOT THE  
2 RIGHT TO SELF-DEFENSE WAS FUNDAMENTAL. THE McDONALD CASE WAS  
3 WHETHER OR NOT THE SECOND AMENDMENT RIGHT TO KEEP AND BEAR  
4 ARMS WAS FUNDAMENTAL. BOTH HAVE BEEN ANSWERED IN THE  
5 AFFIRMATIVE. BOTH ARE FUNDAMENTAL INDIVIDUAL RIGHTS, AND  
6 McDONALD MAKES CLEAR THAT THE SECOND AMENDMENT IS NOT A  
7 SECOND-CLASS RIGHT. IT'S ENTITLED TO EVERY BIT OF THE  
8 PROTECTIONS THAT THE FIRST AMENDMENT GETS. IT IS A  
9 FUNDAMENTAL RIGHT.

10 MOST OF WHAT WE'RE HEARING FROM THE GOVERNMENT, AND  
11 IT'S NOT PARTICULARLY SURPRISING, IS THAT THEY'RE GOING TO  
12 LOSE DISCRETION, THEY'RE GOING TO LOSE THE ABILITY TO MAKE  
13 CERTAIN POLICY CHOICES, AND THAT WAS ANTICIPATED BY HELLER,  
14 AND LET ME CLARIFY. WE'RE NOT CHALLENGING ONE TWO -- 12025  
15 GIVES DISCRETION TO THE SHERIFFS, AND OVER THE YEARS, BEFORE  
16 HELLER AND McDONALD CAME DOWN, SHERIFFS HAD WIDE DISCRETION IN  
17 DETERMINING WHAT CONSTITUTED GOOD CAUSE. THAT WAS THE STATE  
18 OF THE LAW. BUT WHEN -- AND BECAUSE THE SECOND AMENDMENT WAS  
19 DEEMED TO BE, OR RIGHT TO CARRY WAS DEEMED TO ESSENTIALLY BE A  
20 PRIVILEGE, THAT DISCRETION COULD BE VERY BROAD. YOU COULD  
21 DENY FOR PRACTICALLY ANY REASON. THERE WAS NO, NO REAL  
22 CONSTRAINTS ON THAT.

23 THE POINT OF OUR LAWSUIT IS THAT DISCRETION IS NOW  
24 MUCH NARROWER. THE SHERIFFS AND THE ISSUING AGENCIES, THE  
25 ISSUING ENTITIES THAT APPROVE THESE CCW APPLICATIONS DO NOT

1 HAVE THAT KIND OF DISCRETION ANYMORE. IF THEY DEPRIVE YOU,  
2 FAIL TO, REFUSE TO EXERCISE THEIR DISCRETION BECAUSE ALL YOU  
3 SAY IS SELF-DEFENSE AND THEY WANT SOMETHING MORE, THAT IS AN  
4 ABUSE OF DISCRETION. OUR LAWSUIT CHALLENGES THE SHERIFF'S  
5 EXERCISE OF HIS DISCRETION UNDER 12025 AND CONTENDS THAT THAT  
6 IS AN ABUSE OF DISCRETION TO NOT APPLY IT CONSTITUTIONALLY,  
7 WHICH I THINK IS FAIRLY SELF-EVIDENT. IF YOU'RE BREAKING, IF  
8 YOU'RE VIOLATING THE CONSTITUTION IN NOT ISSUING THE PERMIT,  
9 THAT'S AN ABUSE OF DISCRETION.

10 SO IT'S NOT AN OFFICIAL CHALLENGE TO 12025, ALTHOUGH  
11 WE COULD AMEND. I MEAN, IF THAT, IF THE COURT SEES IT  
12 DIFFERENT PROCEDURALLY, I'M NOT, YOU KNOW, I'M NOT, I DON'T  
13 REALLY WANT TO GET BOGGED DOWN BECAUSE OF THE PROCEDURAL  
14 APPROACH WE TOOK. WE COULD CERTAINLY AMEND TO CHALLENGE THAT  
15 PARTICULAR STATUTE IN A DIFFERENT WAY IF THE COURT FELT THAT  
16 WAS THE MORE APPROPRIATE WAY TO APPROACH IT, AND WE HAD SOME  
17 DEBATE ABOUT THAT, BUT THIS SEEMED TO BE THE WAY BECAUSE GOOD  
18 CAUSE, IF IT INCLUDES SELF-DEFENSE, THAT'S NOT  
19 UNCONSTITUTIONAL. YOU CAN REQUIRE GOOD CAUSE AS LONG AS  
20 SELF-DEFENSE IS RECOGNIZED AS A GOOD CAUSE.

21 AND WE DO NOT HAVE TO PRESENT ANY EVIDENCE. IT'S NOT  
22 OUR BURDEN. THE COUNTY AND ZIMRING NEVER CONNECTS CCWs TO  
23 CRIME. IT'S NOT ABOUT CONCEALED WEAPONS *PER SE*. IT'S ABOUT  
24 CONCEALED-WEAPON PERMITTEES. ARE CONCEALED WEAPON LICENSES  
25 CAUSING INCREASED CRIME? ARE CERTAIN PEOPLE CARRYING

1 CONCEALED FIREARMS WITH NEFARIOUS PURPOSES? YES. CAN THE  
2 STATE BAN CONCEALED WEAPONS ENTIRELY IF IT WANTS TO MAKE IT,  
3 AS ITS DISCRETION GETS NARROWED, SO THAT IT'S LEGISLATIVE  
4 DISCRETION? IT CAN'T WIPE OUT THE RIGHT. THAT'S NUNN. BUT  
5 IT CAN CHOOSE HOW TO REGULATE THE RIGHT. SO IT COULD SAY, IT  
6 COULD MAKE A POLICY CHOICE WITHIN THAT CONTEXTUAL PARAMETER  
7 AND SAY, WE'RE GOING TO ALLOW OPEN LOADED CARRY SO THAT YOUR  
8 FIREARM IS EFFECTIVE FOR IMMEDIATE SELF-DEFENSE. IT'S THERE.

9 BY THE WAY, THAT WHOLE THREE-SECOND THING, THAT'S  
10 LIKE IF YOU'RE AN EXPERT. YOU KNOW, I DON'T REALLY THINK  
11 (PAUSE) -- HELLER MAKES IT CLEAR, SO THAT WE DON'T NEED TO GO  
12 DOWN THE ROAD TO CONFLICTING EXPERTS', COMPETING EXPERTS'  
13 DECLARATIONS ABOUT HOW LONG IT TAKES TO LOAD A GUN. IT HAS TO  
14 BE IMMEDIATE SELF-DEFENSE. AND I REMEMBER AT THE ORAL  
15 ARGUMENT JUSTICE SCALIA AND JUSTICE ROBERTS HAD A CHUCKLE OVER  
16 THE NOTION WHEN THE ATTORNEY FOR THE DISTRICT OF COLUMBIA WAS  
17 CLAIMING THAT ALL IT TAKES IS A SECOND TO TAKE THE TRIGGER  
18 LOCK OFF, YOU KNOW, HE'S LIKE, WHEN I HEAR A NOISE IN THE  
19 HOUSE, I'M GOING TO TURN ON THE LIGHT, PUT MY SPECTACLES ON  
20 AND TRY TO UNDO THE TRIGGER LOCK, READ THE COMBINATION IN THE  
21 MIDDLE OF THE NIGHT? I MEAN, THE IDEA IS YOU NEED TO BE ABLE  
22 TO USE IT FOR IMMEDIATE SELF-DEFENSE BECAUSE YOU HAVE JUST  
23 BEEN SURPRISED. YOU'RE NOW TRYING TO LOAD A FIREARM UNDER  
24 PRESSURE, WHILE YOUR LIFE IS AT STAKE, AND SECONDS MATTER, YOU  
25 KNOW, TIME SLOWS DOWN AND SECONDS MATTER MORE THAN AT ANY

1 OTHER TIME IN YOUR LIFE AND YOU'RE TRYING TO LOAD THE FIREARM?  
2 THAT'S NOT AN EFFECTIVE IMMEDIATE EXERCISE OF THE FUNDAMENTAL  
3 RIGHT TO SELF-DEFENSE.

4 BUT AGAIN THE COUNTY AND PROFESSOR ZIMRING HAS NOT  
5 PRESENTED ANY EVIDENCE THAT CRIMINALS GO AND GET CCWs.  
6 CRIMINALS MAY POSSESS CONCEALED FIREARMS, BUT THEY DON'T GO  
7 GET CONCEALED-WEAPONS PERMITS. IF YOU HAVE MORE  
8 CONCEALED-WEAPONS PERMITS, THAT DOESN'T MEAN THAT CRIME IS  
9 GOING TO GO UP. THE TRIGGER DOES NOT PULL THE FINGER. THE  
10 CRIMINAL CHOOSES TO CARRY A FIREARM POSSESSED, AND AGAIN THE  
11 LEGISLATURE WITHIN THAT PARAMETER --

12 THE COURT: A CRIMINAL, I MEAN, A CRIMINAL IS NOT  
13 GOING TO TRY TO GET A CONCEALED-WEAPONS LICENSE, BUT ISN'T A  
14 CRIMINAL WHO CAN'T GET A LICENSE GOING TO USE SOMEONE WHO, A  
15 FIRST-TIMER, I THINK IT IS, OR SOMETHING LIKE THAT, A NEWBY,  
16 AS THE COUNTY SAYS, TO CARRY OUT, EFFECTIVELY, A CRIMINAL  
17 ACTIVITY?

18 MR. MICHEL: TO DO WHAT? BE THE, LIKE THE MULE FOR  
19 THE GUN --

20 THE COURT: RIGHT.

21 MR. MICHEL: -- CARRY THE GUN TO THE CRIME SCENE --

22 THE COURT: YES.

23 MR. MICHEL: -- SO THAT THE GUY (PAUSE) -- I MEAN,  
24 THINK ABOUT THAT FOR A SECOND. I DON'T MEAN TO BELITTLE THAT  
25 QUESTION. THINK ABOUT THAT FOR A SECOND. WHAT THE COUNTY'S

1 POSITION -- IS IT REALLY THE COUNTY'S POSITION THAT SOME,  
2 SOME, I GUESS, 18-YEAR-OLD WHO -- ACTUALLY, 18, BETWEEN 18 AND  
3 21, YOU CAN'T POSSESS A HANDGUN. SO A 21-YEAR-OLD GANG MEMBER  
4 IS GOING TO GO DOWN, PASS THE GOOD-CHARACTER EVALUATION, GETS  
5 A CONCEALED-WEAPON PERMIT, THEN GO GETS THE LICENSE, GETS THE  
6 GUN, AS THEY GO TO DO A DRIVE-BY SHOOTING, HE WILL HAVE HIS  
7 CONCEALED-WEAPON PERMIT IN HIS POCKET, TAKES THE GUN, TAGS  
8 ALONG WITH THE GUY WHO WON'T, THE GANG MEMBER, YOU KNOW, THE  
9 LEADER OF THE GANG WHO WON'T CARRY THE GUN BECAUSE HE'S GOING  
10 TO, HE DOESN'T WANT TO POSSESS THAT GUN UNTIL HE'S ACTUALLY  
11 READY TO KILL SOMEONE WITH IT, AND THEN HANDS OFF THE GUN AT  
12 THE CRIME SCENE SO THAT BETWEEN THE TIME THEY LEFT THEIR  
13 HOUSE, OR WHEREVER, AND THE TIME THEY GET TO THE CRIME SCENE,  
14 THE CONCEALED-CARRY MISDEMEANOR LAW WAS NOT VIOLATED?

15 I MEAN, IT'S KIND OF LUDICROUS IF YOU THINK ABOUT  
16 THAT. IT'S JUST, IT'S NOT -- WELL, THERE'S CERTAINLY NO  
17 EVIDENCE THAT THAT HAPPENS, THAT THAT'S A PRACTICE, AND IF  
18 IT'S THE COUNTY'S BURDEN TO TRY AND ESTABLISH, TO JUSTIFY THIS  
19 BAN, THEN THEY HAVE TO PROVE THAT, AND THERE'S NOTHING IN THE  
20 COUNTY'S DECLARATIONS, OR IN ZIMRING'S, OR NO EVIDENCE THAT  
21 THAT'S A PRACTICE, THAT SOMEHOW CRIME INCREASES BECAUSE CCWs  
22 ARE ISSUED.

23 AND THIS IS NOT AN ACADEMIC EXERCISE ANYMORE. ALL  
24 THESE ISSUES ABOUT PARKS, BARS, SCHOOLS, THERE ARE 40 STATES  
25 NOW THAT HAVE *SHALL ISSUE* SYSTEMS WHERE IF YOU GO IN AND SAY,

1 I WANT A PERMIT FOR SELF-DEFENSE, YOU GET ONE, UNLESS THERE'S  
2 SOME DISABLING FEATURE THAT WOULD STOP YOU FROM BEING ABLE TO  
3 DO THAT.

4 THE COURT: BUT THAT GETS BACK TO THEIR ARGUMENT,  
5 LOOK IT, THE STATE LEGISLATURE HAS SPOKEN. THE LEGISLATURE,  
6 AFTER, I ASSUME, DEBATING SOME OF THESE ISSUES THAT WE'RE  
7 ARGUING ABOUT NOW, HAS SAID THIS IS A *MAY ISSUE* STATE, AND WE  
8 DON'T CARE WHAT THE OTHER STATES ARE, THE *SHALL ISSUE*. BUT, I  
9 MEAN, HOW MUCH WEIGHT DO I GIVE TO THAT, THAT A LOT OF STATES  
10 ARE *SHALL ISSUE*?

11 MR. MICHEL: WELL, THE LEGISLATURE, CALIFORNIA  
12 LEGISLATURE, HAS NOT SAID THAT THIS IS A *MAY ISSUE* STATE.  
13 THEY HAVE DEFINITELY NOT SAID THAT. THEY'VE SAID THAT BOTH --

14 THE COURT: WELL, THE STATUTE SAYS *MAY ISSUE*.

15 MR. MICHEL: NO.

16 THE COURT: DOESN'T IT?

17 MR. MICHEL: WELL, IT SAYS *MAY ISSUE* IF THERE'S GOOD  
18 CAUSE ESTABLISHED, BUT THERE'S A WHOLE LINE OF CASES, WHICH I  
19 DON'T HAVE OFF THE TOP OF MY HEAD, WHICH SAY *MAY* MEANS *SHALL*  
20 IN THAT CONTEXT. SO IF THE COURT WOULD LIKE ADDITIONAL  
21 BRIEFING. I DON'T THINK THE COURT --

22 THE COURT: BUT I THOUGHT YOU WERE CONCEDING THIS IS  
23 NOT A *SHALL ISSUE* STATE. AREN'T YOU?

24 MR. MICHEL: YOUR HONOR, YOU HAVE TO BE, WITH ALL DUE  
25 RESPECT, YOU NEED TO BE CAREFUL ABOUT HOW YOU USE THOSE

1 COLLOQUIALISMS --

2 THE COURT: OKAY.

3 MR. MICHEL: -- BECAUSE THEY'RE NOT REALLY TERMS OF  
4 ART. *SHALL* ISSUE STATES, SO-CALLED *SHALL* ISSUE STATES, THAT  
5 JUST MEANS IF YOU GO IN AND APPLY, YOU'LL GET A PERMIT UNLESS  
6 THERE'S A REASON NOT TO GIVE YOU ONE.

7 THE COURT: AND THAT'S WHAT YOU'RE ARGUING SHOULD BE  
8 DONE HERE.

9 MR. MICHEL: AS A PRACTICAL MATTER, YES. AS A MATTER  
10 OF READING WHAT THE LAW SAYS, NO. WHAT THE LAW SAYS IS, THAT  
11 IF YOU HAVE GOOD CAUSE, THE SHERIFF HAS THE DISCRETION; HE MAY  
12 ISSUE YOU A PERMIT.

13 NOW, THERE IS, JUST TO MAKE THINGS A LITTLE MORE  
14 COMPLICATED, THERE IS A LINE OF CASES THAT SAYS, WHEN IT SAYS  
15 YOU MAY ISSUE A PERMIT, IT MEANS YOU SHALL. IF YOU FIND GOOD  
16 CAUSE, YOU SHALL ISSUE A PERMIT, BECAUSE THERE WAS SOME CASES  
17 THAT DEALT WITH THE CONSTITUTIONALITY OF HAVING THAT MUCH  
18 DISCRETION IN MAY, AND, UNFORTUNATELY, I DIDN'T ANTICIPATE  
19 THIS PARTICULAR LINE OF QUESTIONING, SO I DON'T HAVE THEM ON  
20 THE TOP OF MY, ON THE TIP OF MY TONGUE.

21 BUT THE POINT IS THAT THE CALIFORNIA STATUTE DOES NOT  
22 SAY, DOES NOT SAY THERE'S A LEGISLATIVE HISTORY OR A  
23 LEGISLATIVE POLICY CHOICE THAT SAYS WE'RE GOING TO BE A MAY  
24 *ISSUE* STATE. WHAT IT SAYS IS THE SHERIFF HAS THE DISCRETION,  
25 AND SO IN COUNTIES, IN RURAL COUNTIES, WE ARE EFFECTIVELY,

1 CALIFORNIA IS EFFECTIVELY *SHALL ISSUE*. SHERIFFS ISSUE TO  
2 ANYONE WHO ASKS FOR ONE. WHAT THE LEGISLATURE WAS TRYING TO  
3 DO, I GUESS, AT THE TIME WAS ALLOW FOR SOME VARIATION BETWEEN  
4 ONE COUNTY AND ANOTHER, FRANKLY. IT WASN'T SAYING THAT WE'RE  
5 GOING TO BE *MAY ISSUE* AND YOU ONLY GET IT IF THE SHERIFF  
6 DECIDES YOU HAVE GOOD CAUSE.

7 THE COURT: SO YOU'RE SAYING THERE ARE COUNTIES  
8 WITHIN THE STATE OF CALIFORNIA THAT APPLY THE GOOD-CAUSE  
9 STANDARD DIFFERENTLY.

10 MR. MICHEL: OH, YES. YES, YES, YES, THERE ARE,  
11 BECAUSE THE DISCRETION, BECAUSE OF THE DISCRETION THAT THAT,  
12 THAT 12025 GRANTS SHERIFFS. IN FACT, I SAW A MAP ON THE  
13 INTERNET YESTERDAY. I CAN'T REMEMBER THE SITE, BUT IT SHOWS  
14 THAT -- ESSENTIALLY, IT'S JUST THE STRIP, THE COASTAL STRIP,  
15 THAT HAS LIMITED ISSUANCE OF CONCEALED-WEAPON PERMITS. THE  
16 VAST MAJORITY --

17 THE COURT: BUT THAT'S WHERE THE MAJOR CITIES ARE --

18 MR. MICHEL: CORRECT.

19 THE COURT: -- ISN'T IT?

20 MR. MICHEL: CORRECT. THAT'S THE URBAN AREAS, BUT  
21 YOU WEREN'T ASKING ABOUT AN URBAN VS. RURAL IN YOUR QUESTION.

22 THE COURT: RIGHT.

23 MR. MICHEL: YOU WERE ASKING ABOUT A *MAY ISSUE* VS.  
24 *SHALL ISSUE*. THE POINT I'M TRYING TO ILLUSTRATE IS THAT YOU  
25 CAN'T JUST SAY CALIFORNIA IS *SHALL ISSUE* OR CALIFORNIA IS *MAY*



1     *ISSUE*. CALIFORNIA IS DISCRETIONARY, AND THAT DISCRETION  
2     PREVIOUSLY WAS VERY WIDE, AND SO SOME SHERIFFS SAID, I'LL  
3     ISSUE IT TO ANYBODY WHO ASKS, AND SOME SHERIFFS SAID, OR  
4     POLICE CHIEFS SAID, I'M NOT GIVING A CONCEALED-WEAPON PERMIT  
5     TO ANYONE. NOW, USUALLY, THAT WAS ABOUT, MORE ABOUT POLITICS  
6     AND POWER, I SUSPECT, THAN REALLY POLICY. BUT OUR POINT NOW  
7     IS THAT GOING BEYOND, REQUIRING, IN THE EXERCISE OF YOUR  
8     DISCRETION, REQUIRING MORE THAN SELF-DEFENSE IS AN ABUSE OF  
9     DISCRETION.

10           THE COURT: YOU'RE THE ONE THAT MENTIONED SOME STATES  
11     ARE *SHALL ISSUE*, AND SO WHAT DO YOU MEAN BY THAT?

12           MR. MICHEL: IN THOSE STATES, THE LAW SAYS, IF YOU GO  
13     IN AND APPLY FOR A PERMIT, YOU'RE GOING TO GET ONE, UNLESS YOU  
14     HAVE BAD, AND IT VARIES, YOU HAVE BAD MORAL CHARACTER, OR YOU  
15     HAVE, YOU DON'T HAVE THE RIGHT TRAINING, OR (PAUSE) --

16           THE COURT: RIGHT. YOU DON'T MEET THE  
17     QUALIFICATIONS.

18           MR. MICHEL: THERE ARE A NUMBER OF DIFFERENT,  
19     PROBABLY MORE OBJECTIVE TYPES OF STANDARDS. THERE ARE  
20     STANDARDS YOU HAVE TO MEET IN ORDER TO GET THAT PERMIT. BUT  
21     IF YOU MEET THOSE STANDARDS, IT'S NOT DISCRETIONARY. THE  
22     SHERIFF CAN'T SAY, I'M NOT GOING TO GIVE IT TO YOU. IF YOU  
23     SAY SELF-DEFENSE AND YOU MEET THE OBJECTIVE CRITERIA, YOU GET  
24     ONE. THAT'S *SHALL ISSUE*.

25           THE COURT: AND HOW MANY STATES ARE THERE THAT DO

1 THAT?

2 MR. MICHEL: THIRTY-SEVEN OR 38 AT LAST COUNT.

3 AND SO IN THOSE STATES WHAT HAPPENS, AND THIS IS WHAT  
4 OUR DECLARATIONS ESTABLISH, IN THOSE STATES THE PROPERTY  
5 CRIME, THE VIOLENT CRIME RATE GOES DOWN BECAUSE CRIMINALS  
6 DON'T KNOW WHO'S ARMED, AND SO ABOUT FIVE PERCENT OF THE  
7 PEOPLE TYPICALLY GO OUT AND GET A PERMIT, AND OF THAT FIVE  
8 PERCENT A FAR LESSER PERCENTAGE ACTUALLY CARRY THE FIREARM ON  
9 THEIR PERSON, BECAUSE IT'S CUMBERSOME. IT'S LIKE CARRYING A  
10 BASEBALL AROUND, YOU CAN IMAGINE, ALL DAY LONG. BUT THE  
11 CRIMINALS NEVER KNOW WHICH ONES, AND SO AS FAR AS THEY KNOW,  
12 FIVE PERCENT OF THE POPULATION MIGHT SHOOT BACK. SO NOBODY  
13 GOES DUCK HUNTING WHEN FIVE PERCENT OF THE DUCKS MIGHT SHOOT  
14 BACK. SO IN THOSE STATES VIOLENT CRIME GOES DOWN. PROPERTY  
15 CRIME SOMETIMES GOES UP BECAUSE THE CRIMINALS STEAL CARS  
16 RATHER THAN TRYING TO HOLD SOMEBODY UP, STICK SOMEBODY UP.

17 SO THIS IS NOT ACADEMIC. THIS IS NOT A HYPOTHETICAL  
18 EXERCISE. BUT IT'S ALL IRRELEVANT FOR OUR PURPOSES, I SUBMIT,  
19 BECAUSE WE DON'T REALLY NEED TO GET TO THAT BECAUSE, AS THE  
20 SUPREME COURT RECOGNIZED IN McDONALD, THE ENSHRINEMENT OF THE  
21 CONSTITUTIONAL RIGHTS NECESSARILY TAKES CERTAIN POLICY CHOICES  
22 OFF THE TABLE. SO WHEN THE COURT IS CONSIDERING THIS, I  
23 RESPECTFULLY SUGGEST THE COURT SHOULD REALLY BE VERY CAREFUL  
24 ABOUT WHAT DETERMINING IS A POLICY PREFERENCE OR PERHAPS A  
25 POLITICAL PREFERENCE ON THE PART OF THE COUNTY AS OPPOSED TO A

1 CONSTITUTIONAL JUSTIFICATION FOR, EFFECTIVELY, A BAN, OR, TO  
2 PUT IT CHARITABLY, SO THAT IT BE SUBJECT TO SOME LEVEL OF  
3 SCRUTINY, A SEVERE INFRINGEMENT ON THE RIGHT TO CARRY, BEAR  
4 ARMS.

5 AND A COUPLE OF MISCELLANEOUS POINTS, IF I MIGHT JUST  
6 SORT OF RUN THROUGH IT.

7 THE COURT: YES.

8 MR. MICHEL: I ALWAYS FIND IT SOMEWHAT HUMOROUS TO  
9 HEAR AN ISSUING AGENCY SAY, I ISSUE MOST OF THE APPLICATIONS,  
10 I GRANT MOST OF THE APPLICATIONS. THAT'S BECAUSE THE  
11 SCREENING MECHANISM IS SET UP SO THAT, WHEN YOU GO IN, YOU  
12 DON'T APPLY UNTIL YOU SUBMIT THAT WRITTEN APPLICATION AND  
13 WRITE A CHECK; AND BEFORE YOU GET TO DO THAT, THEY WILL  
14 INFORMALLY REVIEW YOU AND TELL YOU, YOU DON'T QUALIFY, SO  
15 DON'T BOTHER APPLYING. SO YOU CAN'T SAY MOST OF THE  
16 APPLICATIONS ARE GRANTED, BECAUSE MOST OF THE PEOPLE WHO GO  
17 DOWN TO APPLY NEVER ACTUALLY APPLY BECAUSE THEY'RE TOLD IT'S  
18 POINTLESS. SO IT'S KIND OF A MISLEADING CHARACTERIZATION OF  
19 THE COUNTY'S POLICY.

20 A COUPLE OTHER THINGS. I WANT TO MAKE SURE THAT THE  
21 COURT UNDERSTANDS. THE SPECIAL RESERVE ARE NOT RESERVE. A  
22 RESERVE OFFICER -- I THINK IT'S 859, PENAL CODE SECTION, IS  
23 WHAT SETS OUT WHAT A PEACE OFFICER IS UNDER CALIFORNIA LAW,  
24 AND IT LAYS OUT THE DIFFERENT CLASSIFICATIONS OF RESERVE PEACE  
25 OFFICER AND THE PEACE OFFICER STANDARD TRAINING PROGRAM AND

1 ALL THE OTHER THINGS YOU HAVE TO DO TO BE CONSIDERED A PEACE  
2 OFFICER OR A RESERVE PEACE OFFICER.

3 THE RESERVE PEACE OFFICER, THE ACTUAL, TECHNICAL  
4 RESERVE, STATUTORILY DESIGNATED RESERVE PEACE OFFICERS HAVE A  
5 PREFERENTIAL RIGHT TO A PERMIT TO CARRY A FIREARM, A LOADED  
6 GUN, IN PUBLIC. THE HONORARY SHERIFF'S DEPUTIES ASSOCIATION  
7 ARE NOT RESERVE. I JUST WANT TO MAKE SURE THE COURT  
8 UNDERSTANDS THAT. THEY'RE NOT -- IT'S CALLED THE HONORARY  
9 RESERVE INFORMALLY, BUT THEY'RE NOT ACTUALLY RESERVE OFFICERS.  
10 THEY ARE JUST PRIVATE CITIZENS WHO ARE DOING A VERY GOOD THING  
11 FOR THE SHERIFF'S DEPARTMENT, DONATING THEIR TIME AND  
12 PROFESSIONAL EXPERTISE AND MONEY, AND GOD BLESS THEM FOR THEIR  
13 EFFORTS TO SUPPORT THE SHERIFF'S DEPARTMENT, BUT THEY'RE NOT  
14 RESERVE OFFICERS. NONETHELESS, THEY GET (PAUSE) -- WE BELIEVE  
15 THAT THERE'S AT LEAST A MATERIAL DISPUTE, DISPUTED MATERIAL  
16 FACT ABOUT WHETHER OR NOT THEY GET PREFERENTIAL TREATMENT IN  
17 GETTING A PERMIT.

18 OH, BY THE WAY, ON THE BACH VS. PATAKI CASE, AND I'M  
19 NOT SURE THIS IS REALLY RELEVANT BECAUSE OF WHAT THE COUNTY IS  
20 SAYING ABOUT ISSUING TO PART-TIME RESIDENTS. IT WAS REALLY  
21 ABOUT, OUR CLAIM WAS ABOUT PART-TIME RESIDENTS. NOW, MR.  
22 PERUTA HEARD THINGS, PUT A DECLARATION IN ABOUT WHAT HE HEARD.  
23 IT SEEMED TO ME (PAUSE) -- WE DON'T KNOW EXACTLY WHEN THE  
24 COUNTY'S POLICY ON PART-TIME RESIDENTS WAS ACTUALLY  
25 ARTICULATED AND MANIFESTED. IT SHOULD BE PUBLISHED SO THAT

1 PEOPLE KNOW THAT AND WE CAN AVOID THAT CONFUSION.

2 BUT JUST SO THE COURT KNOWS, FROM AN ACADEMIC  
3 PERSPECTIVE, THE PATAKI CASE DEALT WITH NON-RESIDENTS AND  
4 RECIPROCITY BETWEEN STATES AND WHETHER OR NOT A NON-RESIDENT  
5 COULD GET A NEW YORK CONCEALED-WEAPON PERMIT EVEN THOUGH HIS  
6 RESIDENCY WAS WEST VIRGINIA. IT DIDN'T DEAL WITH PART-TIME  
7 RESIDENCY AND WHETHER PART-TIME RESIDENCY WOULD CHARACTERIZE  
8 YOU AS A RESIDENT FOR PURPOSES OF APPLYING FOR A PERMIT. SO  
9 IT WAS, IT'S DIFFERENT, IT'S A DIFFERENT QUESTION, AND IT  
10 DIDN'T IMPLICATE THE RIGHT TO TRAVEL BECAUSE YOU WEREN'T A  
11 RESIDENT, SO YOU DIDN'T HAVE THE RIGHT AS A NON-RESIDENT TO  
12 APPLY FOR A PERMIT. IN OUR CASE, WE'RE SAYING HE'S A  
13 PART-TIME RESIDENT. HE SATISFIES THE RESIDENCY REQUIREMENT.  
14 HE CAN APPLY FOR IT AND BE GRANTED A PERMIT. BUT AGAIN, IT  
15 MAY BE MOOT.

16 THE COURT: ANYTHING ELSE?

17 MR. MICHEL: CAN I HAVE ONE MINUTE, YOUR HONOR --

18 THE COURT: SURE.

19 MR. MICHEL: -- TO SEE? OTHERWISE, WHEN I LEAVE,  
20 THEY'LL TELL ME ABOUT ALL THE THINGS I FORGOT TO SAY.

21 THE COURT: OKAY.

22 MR. MICHEL: YOU KNOW, THERE ARE SOME ISSUES ABOUT  
23 WHAT WE WERE AND WEREN'T GIVEN WITH THE HONORARY RESERVE AND  
24 THE INITIAL APPLICATIONS VS. THE RENEWALS. I THINK IT'S  
25 COVERED IN THE BRIEFS. I JUST DON'T WANT TO (PAUSE) --

1 THE COURT: THAT'S FINE. I'LL LOOK AT THAT AGAIN.

2 MR. MICHEL: YES. I DON'T WANT TO BE PERCEIVED AS  
3 ADMITTING THAT BY NOT ADDRESSING IT, BUT I THINK IT'S  
4 ADDRESSED IN OUR BRIEFS.

5 AND WITH THAT, UNLESS THE COURT HAS SOME MORE  
6 QUESTIONS --

7 THE COURT: I'M SURE, WHEN I GET OFF THE BENCH, I'LL  
8 THINK OF ALL THESE QUESTIONS I COULD HAVE ASKED.

9 MR. MICHEL: WELL, WE LOVE NOTHING MORE THAN TO DO  
10 SUPPLEMENTAL BRIEFING, YOUR HONOR.

11 THE COURT: I KNOW.

12 MR. MICHEL: THIS IS AN IMPORTANT CASE. WE'RE NOT IN  
13 ANY RUSH, AND IF THAT WOULD BE HELPFUL, WE'RE CERTAINLY  
14 WILLING TO DO THAT.

15 THE COURT: I WILL TAKE THAT INTO CONSIDERATION IF I  
16 NEED TO.

17 MR. MICHEL: THANK YOU, YOUR HONOR.

18 WITH THAT, WE'LL SUBMIT.

19 THE COURT: MR. CHAPIN.

20 MR. CHAPIN: MAY I, YOUR HONOR?

21 THE COURT: OH, YES.

22 MR. CHAPIN: JUST A COUPLE THINGS.

23 IT'S INTERESTING, A COUPLE OF COMMENTS THAT COUNSEL  
24 MADE ABOUT WISHFUL THINKING, AND I THINK I STARTED OFF WITH MY  
25 ARGUMENT ABOUT THE CONFINES OF HELLER AND HOW LIMITED IT IS,

1 AND, IF ANYTHING, THE PLAINTIFFS' POSITION IS ENTIRELY WISHFUL  
2 THINKING. I'M NOT COMING INTO COURT AND TELLING YOU SOMETHING  
3 THAT ISN'T TRUE ABOUT WHAT HELLER SAYS. I AM TELLING THE  
4 COURT WHAT HELLER IS LIMITED TO BY WHAT IT SAYS. THE  
5 PLAINTIFFS ARE THE ONES WHO ARE ASKING THE COURT TO EXPAND IT  
6 BEYOND WHAT IT SAYS.

7 THE NEXT THING COUNSEL SAYS, THOSE CASES WERE CHOSEN  
8 SO THEY WOULDN'T HAVE TO GET THERE. THE PLAINTIFFS WERE  
9 CHOSEN FOR VERY SPECIFIC REASONS. THE SUPREME COURT CHOSE  
10 THOSE CASES FOR SPECIFIC REASONS, SO THEY WOULDN'T HAVE TO GET  
11 TO THOSE OTHER ISSUES THAT THEY HAVEN'T GOTTEN TO YET, AND  
12 SCALIA WAS VERY CAREFUL ABOUT THE WAY HE CRAFTED THAT OPINION  
13 BECAUSE HE HAD TO GET FIVE VOTES. THAT'S WHY SECTION THREE IS  
14 THERE THAT IDENTIFIES THE SCOPE OF THE RIGHT AND LIMITS IT TO  
15 THE HEARTH AND THE HOME.

16 I DON'T THINK ANYBODY IN THIS ROOM THINKS THAT THE  
17 SUPREME COURT IS GOING TO HOLD THAT THERE'S A CONSTITUTIONAL,  
18 A FUNDAMENTAL CONSTITUTIONAL RIGHT TO CARRY AROUND A LOADED,  
19 CONCEALED FIREARM, AND THAT'S WHAT THEY WANT THIS COURT TO DO.  
20 IT HAS NOTHING TO DO WITH OPEN-CARRY LAWS. THEY WANT THE  
21 RIGHT TO CARRY A CONCEALED, LOADED FIREARM AS A CONSTITUTIONAL  
22 RIGHT.

23 THEY'RE ASKING THE COURT -- THEY JUST TOLD THE COURT  
24 IT'S AN ABUSE OF DISCRETION TO REQUIRE A SHOWING OF GOOD  
25 CAUSE. THAT MEANS YOU HAVE TO STRIKE THE GOOD-CAUSE LANGUAGE