

Allegheny County Sportsmen's League, Inc.

Report on Hearing on Preliminary Objections

SETTING: Commonwealth Court Hearing

Date: May 9, 2001

Location: 8th Floor, State Supreme Court Room, City County Building, Pittsburgh, PA

Time: 9:30 AM until 10:30 AM

Judicial: Seven Judges of the Commonwealth Court (Kelly, Pellegrini, Colins, Doyle, Smith, Friedman, and Leadbetter). Friedman and Leadbetter were on panel that heard the Reed and Rush cases.

Counsel: Jon Pushinsky, Esq.—Allegheny County Sportsmen's League, Inc.
Lehigh Valley Firearm's Coalition
Joanna Reynolds, Esq.—Governor Ridge and PA State Police

Attendees: Audience (Slavonic, Stolfer, Brinson, Haid, Iannantuono, Pavlik, Maranche, Liberto, Lewellen, Horvath & Friend, Savage, Romanoff & Son, McVicker, and others)

Keywords: Constitution, Guns, Firearms, Registry, Database

Subject: Preliminary hearing on the suit against the Pennsylvania State Police and Governor Ridge brought by the Allegheny County Sportsmen's League and others for keeping an illegal database of handguns in a computerized registry in violation of Pennsylvania Act 5 of 1997 (HB 149) and 18 Pa.C.S. §6111.4 (Registration of Firearms).

CASE PRESENTATION

[Fifteen minutes per side]

Reynolds for defense opened first. Asked for dismissal on two points: 1) Remove Ridge from suit as adequate executive oversight is by state police commissioner and this is where power is vested. 2) Plaintiff is reading law wrong on prohibition of database-*States case based on Act 66*. Reynolds argued that:

- The plaintiffs are reading the law incorrectly because *Act 66* prohibited only the retention of records of sale on long guns in the event that the Instant Check System fails.
- The section which seems to prohibit 18 Pa.C.S. §6111 (b) (1.1) (v) was for remedies to data collected during an electronic system failure and what must be done with data collected on long guns.
- Law can't be read consistently without allowing for collection of records because dealers are required to keep records for 20 years. So why would dealers keep records and cops not.
- Not a registry in the sense that other states use same method of tracking firearm owners through a firearms owners identification card or other mechanism.
- Did not retain records of sale on all guns (she gave examples of reasons why certain guns are not in database) and, only tracked sales that are not prohibited.
- Vital to police for their function (no reasons given) and that ATF Firearms Tracing System was not an effective replacement.

- Sense of legislature was that it [the database] is allowed because of Godshall's statements during floor debates. Rep. Forcier statements to contrary not valid as she was not in leadership position and did not sit on the conference committee.
- Legislature allowed record keeping by state police since the 1930's and why would they prohibit now (Godshall statements).

Questions from the bench for Atty. Reynolds:

Judge Leadbetter:

Interrupted Reynolds almost immediately on the 'remove' Ridge point and expressed skepticism over the need to take this step at this time.

Judge Pelegrini:

Questioned the relevance of 'preliminary injunction' challenge to language in 18 Pa.C.S. §6111 (b) (1.1) (v).

Challenged the confusion between Registry and Record of Sale.

Questioned the PSP 'authority' to collect records (poorly answered by Reynolds, using terms like-one could infer from this section).

Questioned the capability of the PSP database to check for out-of-state guns and their history.

Asked about past record of sale procedures

- ❖ Other questions asked by judges as to why distinctions between mini-data base and full? If full database banned then why not mini-data base?

Pushinsky for Plaintiff Argued that this database of handguns is a registry and prohibited by Act 5 of (1997). Not relevant that it may be useful to police. If it is useful then they should get the law changed. This theme was stressed by Pushinsky. From virtually the very beginning of our presentation the judges peppered Pushinsky with question after question. ***Pushinsky stated that:***

- This is a clear matter of law.
- That even the state brief has stated that there are unanswered legal questions.
- That today's forum is not appropriate to discuss details of this case.

Questions from the bench for Atty. Pushinsky:

Judge Pelegrini:

- Questioned the comparison between the retention of CCW permit information retention and PSP record of sale efforts. ***Pushinsky that this effort is provided for in the law and that CCW holders agree to this as a condition of the permit process.***
- Implied that since dealers are required to keep records that the PSP could compel these records to be placed on an internet site. ***Pushinsky responded that the PSP have no authority to compel these types of actions.***

Judge Leadbetter:

- Questioned the applicability of gun laws on the sale of firearms at gun shows

Judge Friedman:

- Stated that there is a different standard to be applied between firearms and car registration because owning a car is not a constitutional right and owning a firearm is.

Judges asked many, many questions. In particular, why object to a useful tool? How else can PSP accomplish duties?; Doesn't law just apply to keeping data base on sales and couldn't police construct

data base from other sources?; Can't private citizen get access to carry permit records and then make data base?

Pushinsky grilled for sometime by Pellegrini, Friedman, Leadbetter and Doyle. Questions could have been answered better given better preparation time.

OBSERVATIONS:

- ✓ State law (**18 Pa.C.S. §6111 (G)**) prevents and prohibits access to concealed carry permit data. Law enforcement can inquire with sheriff as to validity of a persons permit on a case-by-case basis. Permit data is kept by the state police and the issuing authority only and is to be retained only for *six years*. Furthermore, the state (Act 158 of 1988) mandated that only the identity of the licensee be kept on the carry permit and no connection between that person and any specific weapon.
- ✓ When "shall issue" carry was instituted (**Act 158 of 1988**), County sheriffs were prohibited from requiring a separate permit for each gun to be carried or tying the permit to any gun. As a matter of fact gun ownership is NOT a requirement of a permit.
- ✓ It is a crime to seek carry permit data by anyone. Penalties are imposed for the dissemination/release of carry permit data. (City of Pittsburgh, through a US DOJ approved federal grant program, was establishing a DMAP program for identifying crime areas. They came to Sheriff to seek carry permit data so they could map location of anyone with a carry permit. They were denied this data.)
- ✓ Dealer's keeping records that PSP is not allowed to keep is not an inconsistency, but rather a compromise mechanism that alleviates gun owners justified privacy concerns and the PSP ability to track guns that may have been used in a crime. This also tracks the federal prohibition on anyone other than gun dealers maintaining firearms records.
- ✓ Registry is essential to any gun ban. Consider: Germany, Turkey, England, Australia, Canada, California, New York, Cleveland.
- ✓ Legislature has recognized that registration as a precursor to banning is a legitimate fear. This is why they have forbidden sheriffs to tie guns to owners via the carry permits and records of sale.
- ✓ State admits that long guns are not to be kept on records of sale. Why would state restrict ban only to long guns? It is the state police that are inconsistently applying Act 66 and misinterpreting Act 5, not the ACSL.
- ✓ Process of tracing a gun was deliberately restricted to prevent abuse.
- ✓ Federal law mandates (ATF Form 4473) that guns sales be tied to purchaser. However that form stays with the dealer. Same as mandated by Pennsylvania. This keeps the government from building a database of gun owners, even if only a partial database.
- ✓ Judge Kelly was curiously, and absolutely, quiet during the entire hearing.

PROPOSED THEMES -

- ✓ Deep concern by the legislature that if a list of gun owners was kept, it could be used by a government agency to ban. Consider if such a registry was available to Pittsburgh or Philadelphia when they banned guns in 1993. It took a long time for the legislature to stop said actions. If cities had access to a list they could have taken guns from their citizens and destroyed them before state acted. State felt that such a database would be misused and was removing prospect of same.

- ✓ Legislature has failed to enact legislation in the past session and the current one to specifically make this type of record keeping legal.
- ✓ State admits that long guns are not allowed to be kept in a registry, either record of sale or any other. Clear indication that legislature wants limits on PSP ability to keep electronic registration lists of gun ownership.
- ✓ State removed gun identification from carry permits. Permit is now a licensee to carry any gun concealed.
- ✓ Where are documented statistics of number of crimes solved by this database?

Questions:

- ✓ Where are other registry's prohibited by state law? Could the state police institute a mandatory full registration scheme unilaterally (like Mass, NY, ILL)? Could we stop it?
- ✓ If profiling minorities is wrong and subject to abuse then why is not electronic profiling of gun owners and what recourse does a citizen have in this regard?
- ✓ Is the state police system of record keeping secure and how susceptible to outside hacking?
- ✓ What are the overall costs and how much associated assets, of the state and state police, are dedicated to maintaining this program?
- ✓ What procedures and regulations are in place to mandate the correction and updating of erroneous records?