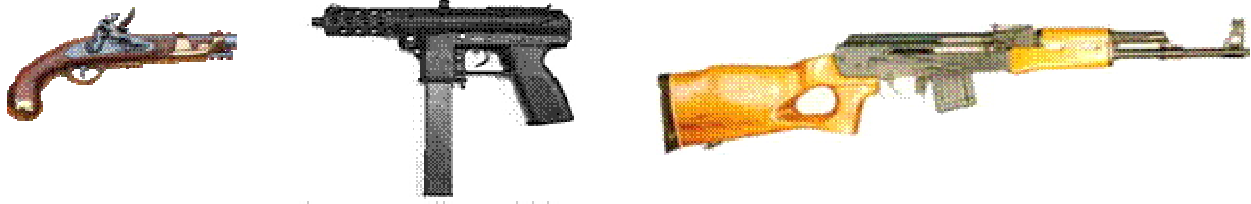


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WHO'S PAUL D. CLEMENT?

Caught up in the gun-rights debate, the Solicitor-General punts



By *Julius (Jay) Wachtel*. If you correctly guessed “[Solicitor General of the United States](#)” it’s probably because you’ve read about [District of Columbia v. Heller](#), the Supreme Court case that will conclusively decide whether the [Second Amendment](#) really *does* guarantee an individual right to possess firearms.

As they say, the Devil’s in the details. Rejecting arguments that gun rights are tied to militia service and that “arms” then and now meant something inherently different, the D.C. Court of Appeals ruled in [Parker V. District of Columbia](#) that an absolute prohibition on handguns infringes on the Second Amendment. In their decision, the first to find that the amendment had separable meanings, the judges nonetheless emphasized that they only intended to prohibit *bans*, not reasonable *regulation*. Outlawing concealed weapons and gun possession by felons was fine; even gun registration and proficiency testing could pass muster.

Not so fast, says Dick Cheney. Now that the ball’s in the ultimate court, he and his gun-loving pals want more: they’re asking for a comprehensive ruling that not only affirms an individual right to bear arms but requires that all gun laws pass the test of “strict scrutiny”, the same threshold that’s used to resolve First Amendment disputes. According to [knowledgeable observers](#) this would set a bar so high as to make gun control well-nigh impossible.

That puts Clement in a bind. In the present political atmosphere, one might expect the Solicitor General to bend to the all-powerful Veep’s will. Indeed, as the [transcript of oral arguments](#) demonstrates, affirming an individual right to bear arms was literally the first thing that he did. But Clement can’t just be an Oval Office mouthpiece -- his office has a statutory duty to defend the laws that Congress enacts. These happen to include [Gun Control Act of 1968](#), which does everything from regulating gun dealers to prohibiting the possession of machineguns.

Caught between an Administration that suspects his loyalty and a Supreme Court that's leaning so far right it could wipe out gun regulation altogether, all that Clement can hope for is that the justices follow Chief Justice Roberts' suggestion to forego imposing all-encompassing legal tests and leave gun laws to sort themselves out on a case by case basis. Naturally, should the concept of an individual right to possess firearms prevail -- and that's clearly where the Chief Justice and his right-tilting colleagues are headed -- the Justice Department would face the nightmarish prospect of defending gun laws one by one, ad infinitum. Instead of a sudden demise it would be death by a thousand cuts.

Incidentally, on the day after the Court heard oral arguments, [a middle-aged man](#) upset at his eviction from a Virginia Beach apartment used a MAC 9mm. pistol and an AK-47 type rifle to kill a 32-year old mother of two and an elderly immigrant, wounding three others, one critically, before turning the weapon on himself. For purposes of comparison above are images of the kind of pistol commonly in use in December 1791, when the Second Amendment went into effect, and the legal guns used by the Virginia Beach man two-hundred seventeen years later.