TREASON AT THE 9TH CIRCUIT COURT OF APPEALS

By Dave Champion

(Los Angeles) On Feb 18, 2003, the U.S. 9th Circuit Appeals Court handed down its decision in the case of *Nordyke v. King*, No. 99-17551, D.C. No. CV-99-04389-MJJ. [Decision by Circuit Judges, Arthur L. Alarcón, Diarmuid F. O'Scannlain and Ronald M. Gould.]

The following two paragraphs are quotes from the Court's decision:

> "The 'individual rights' view advocated by Nordyke has enjoyed recent widespread academic endorsement. *See, e.g.*, Sanford Levinson, *The Embarrassing Second Amendment*, 99 Yale L.J. 637 (1989); Eugene Volokh, *The Commonplace Second Amendment*, 73 N.Y.U. L. Rev. 793 (1998). In addition, Nordyke finds support for the individual rights interpretation from our sister circuit's recent holding in *United States v. Emerson*, 270 F.3d 203 (5th Cir. 2001), that the Second Amendment 'protects the right of individuals, including those not then actually a member of any militia or engaged in active military service or training, to privately possess and bear their own firearms.' *Id*. at 260."
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> "We recognize that our sister circuit engaged in a very thoughtful and extensive review of both the text and historical record surrounding the enactment of the Second Amendment. And if we were writing on a blank slate, we may be inclined to follow the approach of the Fifth Circuit in *Emerson*. However, we have squarely held that the Second Amendment guarantees a *collective* right for the states to maintain an armed militia and offers no protection for the individual's right to bear arms. In *Hickman v. Block*, 81 F.3d 98, 102 (9th Cir. 1996), we held that 'it is clear that the Second Amendment guarantees a collective rather than an individual right."

It has often been posited that the federal courts generally, and the 9th Circuit specifically, ignore US Supreme Court decisions and are willing to mutilate the law if it will further their private political agenda. The 9th Circuit has the dubious honor of being the Circuit most overturned by the US Supreme Court.

In order to determine if these accusations concerning the federal courts are true, let's examine some of the key elements of the quotes shown above.

In the second paragraph, the 9th Circuit states, "...if we were writing on a blank slate, we may be inclined to follow the approach of the Fifth Circuit in *Emerson* [holding that the right to keep and bear arms is an individual right]. However, we

have squarely held that the Second Amendment guarantees a *collective* right for the states to maintain an armed militia and offers no protection for the individual's right to bear arms."

What the Court is saying here is that if it were not for past rulings of this same Court [which held that there is no individual right to keep and bear arms], the Court would be inclined to join other Circuits in declaring that the right is individual, not collective. Or phrased another way, the Court knows (or has been persuaded) that the right is individual, but chooses not to rule that way because of *stare decisis*[1]. It is important to understand exactly what the Court is saying. The Court is saying that since it ruled incorrectly in the past, it will not correct that error today.

If that is the reality of *stare decisis* in America then we'd best start the armed revolution today because this approach means Americans would be trapped in a Twilight Zone legal system in which if a sufficiently lofty court ruled The People's fundamental rights to be non-existent, or non-operative, other courts would then be bound to follow the original court's decision, thus heading down the road of treason and tyranny – all in the name of *stare decisis*. But is that really the way the *stare decisis* doctrine is meant to operate?

> "…while it [*stare decisis*] should ordinarily be strictly adhered to, there are occasions when departure is rendered necessary to vindicate plain obvious principles of law and remedy injustice"
> *Colonial Trust Co. v Flanagan,* 344 Pa. 556, 25 A.2d 728, 729

I agree that *stare decisis* "should ordinarily be strictly adhered to". *Stare decisis* (if applied properly) gives us continuity in the law and confidence as to what can be properly expected under the law. However, you will note that there are prudent and necessary exceptions to the strict application of *stare decisis*. The *Flanagan* court stated that the exception occurs when "rendered necessary to vindicate plain obvious principles of law and remedy injustice." I can't imagine any moral person would disagree with the *Flanagan* court.

In this case the issue under review was one of the most significant unalienable rights possessed by each individual American – the right to keep and bear arms. It has been said that the right to keep and bear arms is the right that allows us to protect all our other inalienable rights from liberty's enemies – foreign ***and*** domestic.

I believe that plaintiff Nordyke's arguments, as well as the 9th Circuit's dicta[2], made it abundantly clear that there was an unquestionable need for the Court to reject

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[1] Policy of courts to stand by precedent and not to disturb settled points. *Black's Law Dictionary*, 6th Ed.
[2] Opinions of the court that do not constitute the court's holding in a case.

stare decisis in this matter in order to "vindicate plain obvious principles of law and remedy injustice."

In its decision the 9th Circuit stated, "The 'individual rights' view advocated by Nordyke has enjoyed recent widespread academic endorsement." The Court then goes on to mention (and quote) the 5th Circuit's decision that the right to keep and bear arms is an individual right.

Decisions of other Circuits may be used in a persuasive manner when arguing a case, but decisions of the various Circuits are not binding upon one another. One of the roles of the US Supreme Court is to hear divisive cases in order to resolve discrepancies between the Circuit courts. Under this method of resolution, the 9th Circuit might have some basis to hold to its earlier decisions – or does it?

In *United States v. Verdugo-Urquirdez*, 494 U.S. 259 (1990), the US Supreme Court stated that 1st, 2nd, 4th, and 5th amendments to the US Constitution were all on equal footing in protecting individual rights from federal action. Although this was dicta (and thus not binding), it certainly established that the US Supreme Court views the right to keep and bear arms as an individual right.

So let's review: The 5th Circuit has ruled definitively that the right to keep and bear arms is an individual right. While not binding upon the 9th, it is certainly persuasive. The 9th admitted that the "individual right" view "has enjoyed…widespread academic endorsement." Again persuasive. And finally, the United States Supreme Court has stated that the right to keep and bear arms is an individual right. And what does the 9th say in response to this clear and convincing evidence? Essentially they said; ***we were wrong in our earlier decision and we choose to continue promoting our own private agenda of supporting gun control by ignoring the clear call to depart from stare decisis and end a corrupt interpretation that has been a plague upon those within the 9th Circuit for decades.*** Or phrased another way, the 9th Circuit looked you straight in the eye and said, ***screw your rights – our agenda comes first!***

Arthur Alarcón, **Diarmuid O'Scannlain** and **Ronald Gould** are foul men and grotesque judges. They are a disgrace to their profession and an insult to America. They should be impeached immediately and should never again hold any public office in this land. If only we still lived in the age where such treasonous bastards could be tarred and feathered, or worse.