

# Ruston Gun Club, Inc.



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## RANGE REFLECTIONS

### LET THE BANNERS FLY

Today is a day on which we should all be proud to be Americans and especially to be Southerners. Have you noticed how many times the reason for an exhaltation of the American identity and experience is the confirmation of an ideal expressed or cause endorsed by the residents of the Southern states? Despite the continued adherence to principles of personal liberty and individuality so many of our fellow citizens seem to think us stupid, backward and the subject of ridicule. This topic became a point of reflection as I was doing some internet cruising concerning the recent U.S. Supreme Court decision in *D.C. v. Heller* and the Joe Horn case. It was striking the number of adverse comments I found not only as to the *Heller* decision but also as to the decision of the Harris County, Texas grand jury not to indict Joe Horn. Several of these writers identified themselves as Texans but then went to considerable length and expenditure of ink to differentiate themselves from individuals they sarcastically referred to as “red blooded gun toting Texans.”

Being a Southerner and an unrepentant Confederate I decline

to apologize for being a gentleman committed to the principles of chivalry and a code of conduct that does not include inaction in the face of criminal activity in my yard or in my neighbor's yard. The issue is not the value of the property protected but the principle that immoral and unlawful activity should not be rewarded with inaction. It has always been a principle of our part of the world that we care about each other, take care of each other and thereby make the world a better place. Such an attitude does not comport with the mindset of a very vocal subset of Southerners who enjoy white wine and moldy French cheese. There is no cause to apologize for the decision of the Harris County, Texas grand jury nor is there any cause for apology for the decision of the U.S. Supreme Court both recognizing as legal fact what has long been believed by the majority of people who think. Our members are all people who think.

I found one particular posting that caused me pause. It was a post by a Texas criminal lawyer apparently auditioning to represent the two illegal aliens killed in the confrontation by lamenting the elimination of the 'duty to retreat' that previously controlled the Texas law on justifiable homicide. He wrote:

“This amended version of art. 9.32 eliminated the “duty to retreat”, but it imposes requirements that (1) the actor have a right to be present at the location where deadly force is used and (2) not provoke the confrontation leading to the use of “deadly force.” While Horn had a “right” to be present on his front porch with the shotgun (even though he had been instructed by the 911 operator not to do so), it could be argued that he provoked the confrontation by picking up his weapon and addressing the two burglary suspects with a the warning, “Move, you're dead.” The two burglary suspects had not committed any crime against Horn nor had they committed any of the enumerated felonies in arts. 9.31 and 9.32 that would have permitted use of deadly force.”

I was absolutely stunned by the interpretation given these facts by someone who should know better. He placed the word right in quotes as being something less than a right. He takes the position you are provoking a confrontation by being on your own property legally armed and attempting to stop criminals engaged in front of you. Also he places great importance on the fact that the 911 operator told him not to go outside. Apparently he is of the opinion like so many police officers I have come across that a good citizen should do what he is told not what he has the right to do. All I can say is that this particular attorney proves the old saying that good lawyers make bad neighbors. Personally I would like to invite Joe Horn to move in next door.

This decision by the U.S. Supreme Court is potentially the most important decision of our lifetimes. There has never before been such a clear recognition of the unalienable rights and the preexistence of those unalienable rights in Supreme Court history. Our unalienable rights of life, liberty and property are not and were not created or granted by our founding documents. Our unalienable rights were recognized and guaranteed by the Declaration of Independence and Constitution. The prohibitions of the Constitution are that those unalienable rights shall not be infringed.

The Heller decision contains some language for which we shall be forever grateful. The majority decision not only recognizes the individual right to keep and bear arms it also provides a definition of each of those terms. The combination of the definitions adopted by the Court define our unalienable right far more than each of the definitions do individually. Arms are defined now officially by the U.S. Supreme Court as “any thing that a man wears for his defense, or takes into his hands, or useth in wrath to cast at or strike another.” The Court goes further to

state “the most natural reading of ‘keep arms’ in the Second Amendment is to ‘have arms’.” A direct quotation taken from the decision is of vital importance:

“At the time of the founding, as now, to ‘bear’ meant to ‘carry.’ See Johnson 161; Webster; T. Sheridan, *A Complete Dictionary of the English Language* (1796); 2 *Oxford English Dictionary* 20 (2d. Ed. 1989) (hereinafter *Oxford*). When used with ‘arms,’ however, the term a meaning that refers to carrying for a particular purpose - confrontation. In *Muscarello v. United States*, 524 U.S. 125 (1998), in the course of analyzing the meaning of ‘carries a firearm’ in a federal criminal statute, JUSTICE GINSBURG wrote that ‘surely a most familiar meaning is, as the Constitution’s Second Amendment . . . indicates: ‘wear, bear, or carry . . . upon the person or in the clothing or in a pocket, for the purpose . . . of being armed and ready for offensive or defensive action in a case of conflict with another person.’”

The Court further held:

C. Meaning of the operative clause. **Putting all of the these textual elements together, we find that they guarantee the individual right to possess and carry weapons in case of confrontation.** This meaning is strongly confirmed by the historical background of the Second Amendment. We look to this because it has always been widely understood that the Second Amendment, like the First and Fourth Amendments, codified a pre-existing right. The very text of the Second Amendment implicitly recognizes the pre-existence of the right and declares only that it ‘shall not be infringed.’ As we said in *United States v. Cruikshank*, 92 U.S. 542, 553 (1976), this is not a right granted by the Constitution. Neither is it in any manner dependent upon that instrument for its existence. The Second Amendment declares that it shall not be infringed. . . . “

All of these excerpts must be read in toto to get the full import of what the U.S. Supreme Court has interpreted the U.S. Constitution to mean. It means the Second Amendment guarantees the right of all persons to carry upon the person an arm for the purpose of being armed and ready for offensive or defensive action in case of conflict with another person. You have the right to open carry as interpreted by the U.S. Constitution. The natural question which arises is whether the prohibitions against open carry presently existing in our contiguous states are in fact constitutional in light of the specific holding of this decision. As you well know as an informed citizen open carry is a guaranteed right in Louisiana but that open carry is not a right in Texas, Arkansas or Mississippi which specifically prohibit carrying a firearm on or about you without possessing a valid concealed carry permit. What has heretofore been considered in our sister states to be concealed carry has been found by the U.S. Supreme Court to be a guaranteed right under the Constitution. Perhaps now Texas will follow the lead of Louisiana and Florida in the enactment of the Castle Doctrine to recognize the right to carry openly as well. As a side note, the Castle Doctrine was nothing new in Louisiana, that doctrine had been the state of the law for most of our existence and was codified in our justifiable homicide statutes decades before being considered in other states.

My position as to open carry is further buttressed by the citation and a quotation in the body of the decision of the Louisiana Supreme Court in *State v. Chandler* :

**The Louisiana Supreme Court held that citizens had a right to carry arms openly: “This is the right guaranteed by the Constitution of the United States, and which is calculated to incite men to a manly and noble defence of themselves, if necessary, and of their country, without any tendency to secret**

**advantages and unmanly assassinations.”**

You are invited to read that passage again very slowly and allow it to sink in. There are many passages that the Court could have chosen to cite with approval but it chose one that not only recognizes the right to keep and bear arms as a principle but also as to a means of bearing, namely, carrying on your person and further to carry openly and unconcealed rather than covertly and concealed.

We now have an endorsement in clear language of the Louisiana position on open carry which has been in place and continuously observed since the inception of Louisiana as a state. The reference is a cause for rejoicing. As context it must be understood that in the early 19<sup>th</sup> century prior to the enactment of the statute in Louisiana prohibiting the carrying of concealed weapon it was considered deceitful and unmanly to carry a concealed weapon such an action being consistent with criminal intent. At the time of the first prohibition honest people were free to carry firearms or weapons openly. The logic which is as valid today as it was prior to 1813 honest men engaged in lawful behavior had no reason to hid their weapons for weapons were a part of everyday life. In a society in which open carry was the norm, the natural presumption was that one was unarmed if his weapon was not in plain sight. Concealment was an ignoble act, an act of deception, an expression of criminal mindset designed to gain an unfair advantage or surprise over his prospective victims. Open carry places in a position of equality with respect to one another by giving all fair warning whether any is armed. Since those who carried concealed weapons sought a deadly, unfair advantage, criminal and malicious intent was presumed. Just as the Constitution recognized the unalienable right to keep and bear it was recognized that honest men carry their weapons openly without deceit or concealment. All are aware that he is armed and

that none but those with criminal intent should be forewarned.

The Louisiana Supreme Court held:

**The act of the 25<sup>th</sup> of March, 1813, makes it a misdemeanor to be “found with a concealed weapon, such as a dirk, dagger, knife, pistol, or any other deadly weapon concealed in his bosom, coat, or any other place about him, that does not appear in full view.” This law became absolutely necessary to counteract a vicious state of society, growing out of the habit of carrying concealed weapons, and to prevent bloodshed and assassinations committed upon unsuspecting persons. It interfered with no man’s right to carry arms “in full open view” which places men upon an equality. This is the right guaranteed by the Constitution of the United States, and which is calculated to incite men to a manly and noble defence of themselves, if necessary, and of their country, without any tendency to secret advantages and unmanly assassinations.**

With the decision of the U.S. Supreme Court in *Heller* the entire nation now recognizes what Louisiana held to be the law and the fact since 1850, freemen have the right to keep and bear arms and freemen bear their arms openly and proudly.

It is a day for the Bonnie Blue and all it stands for to fly. The decision to adopt the Bonnie Blue as our symbol was the right one. Let it fly and may it fly forever more. Let the flag of the Republic fly and may the Republic for which it stands stand proud.

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