

OFFICIAL TRANSCRIPT
PROCEEDINGS BEFORE
THE SUPREME COURT
OF THE
UNITED STATES

CAPTION: LENARD RAY BEECHAM, Petitioner v. UNITED
STATES

CASE NO: No. 93-445

PLACE: Washington, D.C.

DATE: Monday, March 21, 1994

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1 IN THE SUPREME COURT OF THE UNITED STATES

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3 LENARD RAY BEECHAM, :

4 Petitioner :

5 v. : No. 93-445

6 UNITED STATES :

7 - - - - -X

8 Washington, D.C.

9 Monday, March 21, 1994

10 The above-entitled matter came on for oral
11 argument before the Supreme Court of the United States at
12 11:03 a.m.

13 APPEARANCES:

14 NATHAN LEWIN, ESQ., Washington, D.C.; on behalf of
15 the Petitioner.

16 EDWARD C. DuMONT, ESQ., Assistant to the Solicitor
17 General, Department of Justice, Washington, D.C.; on
18 behalf of the Respondent.

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1 P R O C E E D I N G S

2 (11:03 a.m.)

3 CHIEF JUSTICE REHNQUIST: We'll hear argument
4 now in Number 93-445, Leonard Ray Beecham v. The United
5 States.

6 Mr. Lewin.

7 ORAL ARGUMENT OF NATHAN LEWIN

8 ON BEHALF OF THE PETITIONER

9 MR. LEWIN: Mr. Chief Justice and may it please
10 the Court:

11 These two criminal cases, joined here on
12 certiorari to the Fourth Circuit, present a single issue
13 of statutory construction. Does the language used by
14 Congress, in enacting the Firearm Owners' Protection Act
15 of 1986, bar individuals who have been convicted of
16 felonies in Federal courts from possessing firearms even
17 though State law permits them once again to vote, to sit
18 on a jury, or to hold public office?

19 The Government acknowledges that if a State
20 conviction were involved -- indeed, in the Jones case
21 there are two State convictions as well as a Federal
22 conviction -- the restoration of the felon's rights
23 entitles him to own a gun under Federal law.

24 The contested issue is only whether the
25 restoration of rights can affect a Federal conviction, and

1 of course, we begin, as the Court does in so many of these
2 cases, including the entire sequence of Gun Control Act
3 cases which ended with the Dickerson case that led to the
4 Firearm Owners' Protection Act, with the language of the
5 statute, and if the Court will permit me, I would like to
6 address the Court's attention to the very specific words
7 of this statute, and they appear at the bottom of page 2
8 and the top of page 3 of our brief.

9 Section 921(a)(20) of title 18 defines what is a
10 crime punishable by imprisonment for a term exceeding 1
11 year, and the first point is that it's interesting that
12 that statute, in subsection (A) and subsection (B), makes
13 specific reference to Federal or State offenses in
14 subsection (A), and to any State offense in subsection
15 (B), and from that I believe it is clear that Congress,
16 when it was trying to distinguish or state anything with
17 regard to this area of the law that could in some way
18 distinguish between Federal and State offenses, knew that
19 those words could be inserted in the statute, and it did
20 so.

21 But then the statute goes on with the language
22 which Congress added in 1986 following this Court's
23 decision in Dickerson, and quite frankly to overrule this
24 Court's decision in Dickerson, and the first sentence
25 states that the conviction of a crime is to be determined

1 in accordance with the law of the jurisdiction in which
2 the proceedings were held.

3 In other words, how one defines what is a
4 conviction is to be determined not as a matter of Federal
5 law, which this Court said was the rule in Dickerson --
6 and that was, by the way, the Court unanimously. Even the
7 Chief Justice in his dissenting opinion agreed that it was
8 a matter of Federal law -- and Congress said no, you're to
9 look to State law to determine whether it is or is not a
10 conviction.

11 But beyond that, Congress went on with very
12 specific language. They said, any conviction -- again,
13 not any State conviction, but any conviction -- which has
14 been expunged or set aside, or for which a person has been
15 pardoned or has had civil rights restored, and it's
16 interesting, if one looks at that language, that what
17 Congress has done, it has really divided these four
18 classes of postconviction actions into really two groups.

19 One is a conviction which has been expunged or
20 set aside. In other words, where the court itself, or the
21 sovereign itself has expunged the conviction, or by appeal
22 or some other manner the conviction has been set aside,
23 and then Congress went on to say, for which a person has
24 been pardoned or has had civil rights restored. Congress
25 did not say, any conviction that has been nullified by

1 pardon or by a restoration of rights.

2 The second half of this provision, it spoke to
3 the person, and it said, one looks to see whether the
4 person has been pardoned, and whether he has had his civil
5 rights restored, and that, to us, is plain language that
6 demonstrates that if you look at the defendants, like
7 Messrs. Jones and Beecham in this case, and you're to
8 consider whether they, as they stand at the time that they
9 are found with a weapon in their possession have had their
10 civil rights restored.

11 QUESTION: It is true, Mr. Lewin, that all of
12 the other three means of making the conviction not count
13 are means that can only be employed by the same
14 jurisdiction that entered the conviction, only that
15 jurisdiction can expunge, only that jurisdiction can set
16 aside, and only that jurisdiction can pardon. Some other
17 State could not, or some other jurisdiction.

18 Doesn't that lead you to think that when it
19 says, or has had civil rights restored, it again is
20 referring to the same jurisdiction?

21 MR. LEWIN: I think not, Justice Scalia, and the
22 reason why not is because the matters that the first three
23 relate to are all things which are done by the sovereign
24 which causes the conviction in the first place. The
25 conviction expunged, the conviction set aside, or

1 essentially the pardon by that sovereign.

2 Taking away civil rights -- and I think this is
3 the Government's basic error, when they speak about the
4 status of a conviction. Taking away one's civil rights is
5 not done by the sovereign or the statute which a felony
6 offender has violated. It is following his conviction
7 that another law, a State law.

8 QUESTION: Mr. Lewin, which one? Suppose the
9 defendant is a resident of State X, but the convictions
10 are in State Y, and State Y would not provide for
11 restoration of civil rights, but State X, where the
12 defendant has always lived, and lives after imprisonment,
13 would. Which one?

14 MR. LEWIN: We think that a literal reading of
15 the statute means that State X can be applied, the law of
16 State X, and if he then has his rights restored, then he
17 qualifies under this statute.

18 Now, the Government points out, and it's true --

19 QUESTION: If he is in State X. That's --

20 MR. LEWIN: If he lives in State X. Yes, I'm
21 sorry. That's what I understood.

22 QUESTION: Do you have --

23 QUESTION: The statute doesn't say he has to
24 live in State X.

25 MR. LEWIN: Pardon?

1 QUESTION: The statute doesn't say he has to
2 live in State X.

3 MR. LEWIN: No.

4 QUESTION: I don't know why Nevada couldn't pass
5 a law that says, we think all convicted criminals who have
6 served their debt to society should be treated like any
7 other free citizen, and that's the law of Nevada. It
8 applies to everybody. Wouldn't anybody just go to Nevada
9 and get the benefit of this statute?

10 MR. LEWIN: Yes, Justice Stevens, if he lived in
11 Nevada. But he doesn't get his rights restored --

12 QUESTION: Why does he have to live in Nevada?

13 MR. LEWIN: Well, because the only way you get
14 practically your rights restored is if you go to vote, and
15 you're permitted to vote, you go to be a juror, and you're
16 permitted to be on a jury --

17 QUESTION: Apply for a driver's license.

18 MR. LEWIN: Well, driver's licenses -- felons
19 are not deprived of driver's licenses.

20 But the point is, Justice Stevens, that
21 restoration means -- is the kind of thing which your local
22 law, where you live, takes it away from you, and then it
23 restores it to you. It doesn't take it away from you if
24 you --

25 QUESTION: If the statute says you're deprived

1 of these rights while you're in prison, but after you
2 serve the sentence, they're automatically restored and
3 you're treated like a free citizen --

4 MR. LEWIN: Well -- yes.

5 QUESTION: -- that would do it, under your
6 reading.

7 MR. LEWIN: Well, to that extent, Justice
8 Stevens, our position really is that if, to the extent
9 that the State of conviction would restore his rights, and
10 he's been in prison during that period of time, there
11 would also be a restoration of rights.

12 In answer to Justice Ginsburg's question --

13 QUESTION: Oh, but our -- both Justice Ginsburg
14 and I are concerned about the case in which the conviction
15 is in New York and the gentleman is now in Nevada.

16 MR. LEWIN: Yes.

17 QUESTION: And Nevada has a very generous policy
18 about former convicts. Why can't Nevada give carte
19 blanche to anybody in the country under your reading?

20 MR. LEWIN: To those who live in Nevada, yes,
21 Justice Stevens.

22 QUESTION: Why do they have to live -- oh, they
23 have to live in Nevada because otherwise they would have
24 no rights there.

25 MR. LEWIN: Otherwise they haven't had -- I

1 haven't had my rights restored in the State of Wyoming
2 because I've never been in the State of Wyoming.

3 QUESTION: If you had -- you were living in
4 Wyoming, say, after you got out of prison, then you could
5 move to any other State and it wouldn't matter what those
6 laws were. Can you give me any other example, Mr. Lewin,
7 where the effect of a judgment, either of a Federal
8 judgment or a judgment of State B, is determined by the
9 law of State X?

10 That is, you're taking a Federal judgment -- the
11 Federal conviction in Beecham, Federal judgment in
12 Jones -- and you're saying, the effect of that judgment is
13 determined by the law of another State.

14 Full faith and credit is usually -- the
15 accoutrements of a judgment are determined by the place in
16 which the judgment is rendered, right?

17 MR. LEWIN: Yes.

18 QUESTION: That's the ordinary rule. So this
19 would be an extraordinary rule, and I was trying to think
20 of an analogy, and I couldn't.

21 MR. LEWIN: Well, Justice Ginsburg, first of all
22 it's not the effect of the judgment. What has to be
23 understood, it's the effect of State law on somebody who
24 has had a Federal judgment.

25 Your rights are not deprived by the Federal

1 conviction. There's nothing in the Federal statute,
2 whether it's a fraud statute or a tax statute, that says
3 you may not vote after you've been convicted of that
4 offense. It's only because you live in the State of
5 Nevada, if the State of Nevada says, now you may not vote
6 because you've been convicted of a tax offense. So it's
7 not the Federal offense itself that takes anything away
8 from you.

9 But in answer to your direct question, I think
10 we found -- we hadn't cited it in the brief because we
11 found it over the weekend, really, but there is a
12 provision in Federal 28 U.S.C. which provides that Federal
13 jurors are eligible -- it certainly lists as to when
14 they're ineligible, if they can't read or write English
15 and so on, but then it says, if they have a charge pending
16 against them for the commission in a State or Federal
17 court of record of a crime punishable by imprisonment for
18 more than 1 year, and his civil rights have not been
19 restored.

20 QUESTION: What section is that?

21 MR. LEWIN: That's section 1865 of 28 U.S.C. --
22 and I submit, Justice Ginsburg, that if you were to
23 consider somebody being called for Federal jury service in
24 the State of Nevada who 20 years ago had a felony
25 conviction in the State of New York, and then he lives in

1 the State of Nevada, and the question is, does he qualify
2 for Federal jury service, and I submit that under this
3 statute, if the State of Nevada said, your rights have
4 been restored for Federal felonies no matter where they've
5 been committed, that person will be permitted to serve on
6 a Federal jury in the State of Nevada, and if that's
7 true --

8 QUESTION: Well, you're submitting that, but no
9 court has held that.

10 MR. LEWIN: No, I agree, there's been no
11 decision along that line, Justice Stevens.

12 QUESTION: It's really the same issue we have in
13 this case.

14 MR. LEWIN: I should have prefaced my response
15 to Justice Ginsburg by saying that I don't think that
16 question has to be reached in this case, by the way,
17 because this is not a case involving somebody who has
18 moved from State A to State B.

19 Even if it were true -- even if it were true
20 that one has to look to the State of conviction -- and let
21 me say, the Government cites cases where courts have sort
22 of in passing -- the question has not really been decided,
23 has not been litigated in the courts of appeals, but we
24 acknowledge that in passing and just looking at the
25 statute, many courts of appeals have said well, we look to

1 the State of conviction to see whether they restore
2 rights.

3 There's something maybe instinctive, maybe along
4 the lines of what you said, Justice Ginsburg, on the part
5 of courts to say well, let's look at the State of
6 conviction.

7 QUESTION: Or look at the Federal system,
8 because in Beecham's case you have only the Federal
9 conviction, isn't that right?

10 MR. LEWIN: Well, Mr. Beecham had earlier State
11 convictions, Your Honor. They're not in the record.

12 QUESTION: Then take a case where there is
13 only --

14 MR. LEWIN: Yes.

15 QUESTION: Only a Federal conviction. You would
16 still say, if that person lives in a State that restores
17 civil rights immediately on release from prison, that the
18 effect of that Federal judgment will be determined by the
19 State, by the State's law on restoration, so the Federal
20 judgment is in some respect diminished. It doesn't have
21 as dire a consequence for the defendant as it would if you
22 didn't have the State law.

23 MR. LEWIN: Except in theory, Justice Ginsburg,
24 there could be a State -- we know of no State, but there
25 could be a State that says, we don't care whether you've

1 had a felony conviction, we will impose no disability on
2 anybody who's had a Federal conviction. If there's true,
3 there's no disability that is ever imposed by the Federal
4 statute.

5 The only reason any disability is imposed that
6 ends up being subsequently restored is because there is a
7 State law, so it's not -- it doesn't make sense to speak
8 of the disability imposed by the Federal conviction. The
9 civil rights --

10 QUESTION: But your answer is that it's the
11 same -- I'm trying to get away from the State of
12 conviction. If we had simply a Federal conviction --

13 MR. LEWIN: Yes.

14 QUESTION: Your theory works just the same way.

15 MR. LEWIN: Yes, and indeed, in the Beecham
16 case, the interesting thing is that in this case, in the
17 Beecham case, in fact, the Court looked to the State of
18 conviction to see what Tennessee law was. That's what the
19 Court thought was significant.

20 At the same time, the Fourth Circuit in the
21 Jones case, interestingly enough, did not look to this law
22 of the State where the Federal court sat. Mr. Jones had
23 been convicted in the district court in Ohio, and yet the
24 Federal court in passing said, well, he's gotten a very
25 nice certificate from the State of West Virginia which

1 restores all his rights, therefore we're assuming that his
2 rights have been restored, but it's still a Federal
3 conviction, but they did not look to the law of Ohio, so
4 it's clear to us this is an open question.

5 We think really it's an issue that this Court
6 doesn't have to decide in this case as to whether the law
7 of residence -- the law of the State of residence or the
8 law of the State of conviction controls.

9 QUESTION: Mr. Lewin, you assume that there has
10 to be some way in which this provision "or has had civil
11 rights restored" applies to a Federal conviction, but why
12 do I have to assume that that particular one applies to a
13 Federal conviction?

14 Surely I can envision a State that does not
15 accord its Governor any pardon power, and I would say,
16 well, in that State, any conviction would not have the
17 benefit of this provision or set-aside, or for which a
18 person has been pardoned, right, and I'd say, well, some
19 States don't have that. That's okay.

20 Why can't I say, with respect to the Federal
21 Government, that provision applies to many States, maybe
22 most States, it just doesn't apply to the Federal
23 Government? Isn't that a conceivable disposition of it?

24 MR. LEWIN: I think if so, if Congress had
25 intended that in any way, I think Congress would have said

1 in the language of that statute that it refers only to
2 State convictions, or in the case of State convictions has
3 had civil rights restored, but otherwise, if Congress is
4 saying, a person has had civil rights restored, these are
5 two individuals who have had their civil rights restored.

6 QUESTION: But it was -- Justice Scalia's
7 reading would make the second sentence compatible with the
8 first sentence, which the thrust of that seems to me that
9 the conviction, the judgment of conviction, is determined
10 by the law of the jurisdiction in which it was held.

11 MR. LEWIN: I think the problem, Justice
12 Ginsburg, is that that reading and the Government's
13 reading makes the second sentence entirely superfluous.

14 If we are looking only to whether the conviction
15 still has the status of a conviction, it would have been
16 sufficient for Congress simply to have said the first
17 sentence: what constitutes a conviction of such a crime
18 shall be determined in accordance with the law of the
19 jurisdiction in which the proceedings were held.
20 Therefore, if a conviction no longer has the status of a
21 conviction, whether it's by expungement or anything else,
22 it would be --

23 QUESTION: -- Mr. Lewin, because the prohibition
24 is on a person who's been convicted, so if he ever had a
25 conviction, he would be disentitled. You need the second

1 sentence to -- the very beginning in (g), "It shall be
2 unlawful for any person who's been convicted."

3 QUESTION: You haven't heard some of the Federal
4 prosecutors argue that we have, Mr. Lewin. I assure you,
5 they would argue -- but you say that they wouldn't argue.

6 MR. LEWIN: But it does appear to me that if the
7 crime has been expunged, the conviction has been expunged
8 or set aside, or pardoned, or by the jurisdiction in which
9 it was entered is no long effective so its status is no
10 affected, then the law of the jurisdiction in which the
11 proceedings were held no longer considers it a conviction.

12 QUESTION: No, but it's still true that he had
13 been convicted.

14 MR. LEWIN: Yes, Justice Stevens, it's true that
15 he had been convicted, but --

16 QUESTION: That's what makes him ineligible, the
17 fact that he had been convicted.

18 MR. LEWIN: But still, we submit that the
19 second -- what the second --

20 QUESTION: And the other thing that I don't
21 think you've quite responded to in our multi-State
22 example, if there is an expungement in one State for
23 purposes of this statute, that takes care of -- it removes
24 the conviction in every state --

25 MR. LEWIN: Yes, sir.

1 QUESTION: Because it's no longer a conviction
2 to be considered under the statute, so if you are pardoned
3 in Nevada for a Federal offense, you've got a carte
4 blanche for the whole country.

5 MR. LEWIN: That's exactly what Congress has
6 said. Congress has said this entire -- this statute,
7 Justice Stevens, by its very terms is one which creates a
8 patchwork quilt, as it were, depending on the
9 jurisdiction -- the different jurisdictions.

10 QUESTION: But surely the State of Nevada
11 wouldn't pardon one for the committing of a Federal
12 offense, would it?

13 MR. LEWIN: No, it couldn't. It wouldn't have
14 the jurisdiction. I assume --

15 QUESTION: No, but it would say, we used to
16 disqualify you for jury service or for --

17 MR. LEWIN: Right.

18 QUESTION: -- various rights. We now restore
19 those rights in Nevada.

20 MR. LEWIN: Yes.

21 QUESTION: That would take care of -- give him a
22 carte blanche for the whole country. It has to -- it is
23 no longer a conviction within the meaning of the statute.

24 MR. LEWIN: Once he has had his rights restored,
25 that's right, Justice Stevens. That's what the statute

1 says. A person has --

2 QUESTION: Even if you only spent 10 minutes in
3 Nevada, just enough time to have rights taken away and
4 restored.

5 MR. LEWIN: Well, I think he'd have to spend
6 enough time to qualify otherwise, to be a voter, or a
7 juror, or to run for public office. You can't have your
8 rights restored -- I mean, obviously, somebody goes in for
9 a sham -- you know, just runs in to test out the casinos
10 in Nevada for a day and then leaves, and says, well, I've
11 now gotten my civil rights back.

12 QUESTION: Establish residence for long enough
13 to file a divorce action, which used to require, I think,
14 30 days or something like that. Whatever that period is
15 would be enough to (a) have your rights taken away from
16 you and then later restored.

17 MR. LEWIN: Frankly, Justice Stevens, I don't
18 see why that's so troublesome. If people don't -- I don't
19 think it's realistic to expect people to change --

20 QUESTION: It's not troublesome at all. It's
21 just a question of whether that's what Congress intended.

22 MR. LEWIN: And I think -- I submit that
23 Congress intended it with regard to bona fide residences.
24 If somebody resides some place where his civil rights have
25 been restored, then Congress said, if he can be a juror,

1 and he can decide on guilt or innocence of somebody else
2 with regard to a felony, or he can run for Governor of the
3 State, he can run to be an elected officer in that State,
4 we're not going to deprive him of the right to carry a
5 gun.

6 QUESTION: Except that there's a difference --

7 QUESTION: Whatever may be the evils of that
8 particular interpretation, they're not going to be made
9 any different by whether or not we construe the language
10 to include a Federal statute, are they? I mean, there are
11 still all sorts of possibilities, presumably, regardless
12 of how we construe the language affecting a Federal
13 conviction.

14 MR. LEWIN: Definitely, Mr. Chief Justice, and
15 Mr. Stevens -- Justice Stevens, let me point that out,
16 too, that regardless of this issue, as the Chief Justice
17 has said, even by the Government's own admission, the very
18 same concerns and the very same parade of horrors, if
19 one views it as horrors, would be possible simply by the
20 use of State law to affect State convictions.

21 Somebody's convicted in New York and decides he
22 wants to possess a rifle, he travels to Nevada for enough
23 time, he then lives there, he gets his rights restored,
24 and the very same thing could happen, because the Federal-
25 State --

1 QUESTION: It only happens in that State. It
2 only happens in that State, which is master within its own
3 house, but you're saying that Congress has somehow given
4 it to that State to remove this individual's subjection to
5 increase penalty Nationwide, or to this particular
6 sanction Nationwide.

7 MR. LEWIN: Because the statute does not say,
8 has been pardoned by the jurisdiction that convicted him,
9 it simply says, it has been pardoned.

10 QUESTION: No, but that's not the implication of
11 what Justice Scalia is saying. Justice Scalia is
12 suggesting that you might have a regime in which in Nevada
13 he can possess the gun, but he can't cross the line into
14 California and possess the gun, but you're saying when he
15 goes to California, his status remains the same. Isn't
16 that your position?

17 MR. LEWIN: Well, Justice Souter, quite frankly
18 that's even another question which the courts of appeals
19 have not resolved.

20 QUESTION: Well, are you not taking a position
21 on that?

22 MR. LEWIN: I'm saying I think reading it
23 literally I think once his rights have been restored he
24 could go to California. However, I'm saying that's
25 another question --

1 QUESTION: I think your position is yes, he can
2 go to California, and his -- the removal of the disability
3 goes with him.

4 MR. LEWIN: On the other hand, my point is that
5 in this case there are various questions that this court
6 need not reach, the question of whether somebody who lives
7 in Nevada and may therefore own a rifle in Nevada, and
8 then moves to a State which does not provide for
9 restoration of rights, and therefore his old New York
10 conviction again might prevent him from voting or serving
11 on a jury, could that person possess a rifle under Federal
12 firearms law?

13 I'm saying, it's another question. I think read
14 literally, I think the statute would apply, but I could
15 see a court of appeals reaching that question and saying,
16 oh, no, just as with the Federal jury qualification, a
17 person might be qualified to be a juror in a Federal court
18 in Nevada, and then when he moves to a State which doesn't
19 restore the rights, suddenly that right is taken away from
20 him.

21 QUESTION: But your argument on the jury
22 question is at least different vis-a-vis whether the
23 restoration is a function of Federal law or State law,
24 isn't it, because -- I may be wrong in this, but I don't
25 think there's any Federal statute that restores a

1 convicted felon's rights to serve on a Federal jury,
2 whereas there is a Federal statute by which a convicted
3 felon can apply to be excused from the prohibition on gun
4 ownership.

5 MR. LEWIN: Yes, Justice Souter, but we
6 certainly do not think that that is a restoration of civil
7 rights statute. That statute appears at page 3 of our
8 brief. It sets up wholly different standards. It
9 requires reputation testimony, it requires likelihood to
10 act in a manner not dangerous to public safety, various
11 other standards. It's not a restoration of civil rights.

12 The Government tries, looking around for
13 something which they can say is a Federal statute.

14 QUESTION: Well, it's a restoration of a civil
15 right.

16 MR. LEWIN: It's a restoration of a right. I
17 guess it's a civil right.

18 QUESTION: Okay.

19 MR. LEWIN: But it is not -- I don't think it
20 can be classified within the language that Congress has
21 used in 1921 --

22 QUESTION: I guess my only point was, your --
23 the position vis-a-vis jury service I think is
24 indisputably on your side, because I don't think there's a
25 Federal statute that provides for any way to become

1 eligible, whereas that is not true with respect to the
2 firearms ownership.

3 QUESTION: May I ask if your theory would apply
4 to -- say Canada had a law that deprived people of the
5 right to vote if they had been convicted of a felony in
6 another country. They went to Canada, then they restored
7 the right to vote in Canada. That would remove the
8 conviction for purposes in the United States, I suppose.

9 MR. LEWIN: Well --

10 QUESTION: Literally. Literally. Same --

11 MR. LEWIN: That is -- that is -- I think
12 clearly what the courts could say and should say is that
13 what Congress was contemplating was not under the law of
14 some foreign jurisdiction, which might say any --

15 QUESTION: But you would acknowledge --

16 MR. LEWIN: They are talking about American
17 jurisdictions.

18 QUESTION: But you would acknowledge the plain
19 language would apply equally to that case?

20 MR. LEWIN: Well, I'd acknowledge that it would
21 be possible to make that argument, but I think in the
22 context of what legislates about, I just don't think that
23 that's a realistic interpretation.

24 QUESTION: And except you're not really reading
25 it literally. If you read it literally, you would say it

1 doesn't matter where he resides, if any State has restored
2 his civil rights, he can own guns. You're not reading it
3 literally, so the dispute between you and the Government
4 is whether the limitation that you import is going to be a
5 limitation of residence, or rather, a limitation of the
6 State of conviction. It's one or the other. Nobody reads
7 it literally.

8 MR. LEWIN: Well, I'm sorry, Justice Scalia, I
9 think first of all our disagreement with the Government,
10 as I say, in this case really doesn't have to do with
11 State of residence.

12 I think the Court can decide it without deciding
13 the State of residence question, but beyond that, our
14 reading is that nobody gets his rights restored unless
15 he's within the jurisdiction. He lives within the
16 jurisdiction so that his rights are restored.

17 The mere fact that there is some State that says
18 hypothetically, if you lived here you would get your
19 rights restored, that's not a literal reading of the
20 statute. We don't think so. It doesn't say he would
21 hypothetically could have had his rights restored. He did
22 have his rights restored. You have to be in the
23 jurisdiction to have your rights restored in that
24 jurisdiction. We think that that's what a literal reading
25 of the statute means.

1 We'd like to reserve the rest of our time for
2 rebuttal.

3 QUESTION: Very well, Mr. Lewin.

4 Mr. DuMont.

5 ORAL ARGUMENT OF EDWARD C. DuMONT

6 ON BEHALF OF THE RESPONDENT

7 MR. DuMONT: Thank you, Mr. Chief Justice, may
8 it please the Court:

9 The Government's construction of the language at
10 issue here is succinctly stated. The status of any prior
11 conviction for purposes of the Federal Gun Control Act is
12 determined by reference to the law of the jurisdiction
13 that rendered the jurisdiction.

14 There are two basic propositions that I'd like
15 to focus on that we think make the case straightforward.
16 First, ours is the natural reading of the statute,
17 particularly in light of its background and purpose, and
18 second, our reading provides clear, textually bounded and
19 easily administered rule.

20 QUESTION: What would you say was the purpose,
21 Mr. DuMont? One could certainly infer that the purpose
22 was to make sure that people in prisons didn't get guns,
23 but as soon as they got out, they could. I mean, this was
24 really quite a bath that Congress gave after our Dickerson
25 decision.

1 MR. DuMONT: Well, I think it would be an
2 extraordinary reading to think that Congress intended that
3 anyone, once you got out of prison, could have had a gun,
4 because if they had intended that, they could have said
5 that much more simply. What they did intend to do was to
6 take the state of pre-1986 law, pre-Dickerson law, which
7 was that Federal law determined the status of a State
8 criminal disposition no matter what it was, so that for
9 instance, in one of the famous cases, a State pardon,
10 which explicitly restored State firearms rights, was not
11 given effect for Federal law.

12 Now, Congress was reacting to that kind of
13 situation, and what they said about that was, look, if
14 we're relying on a State's conviction for purposes of
15 Federal law, we ought to defer to the State's
16 characterization of whether something was a conviction in
17 the first place -- that was Dickerson -- and also, any
18 subsequent action that a State might take, that a
19 rendering jurisdiction might take to attenuate the ongoing
20 effects of the conviction.

21 QUESTION: When you see in the back of the
22 petitioner's brief the State laws collected, almost all
23 States seem to restore civil rights, so that I don't think
24 it's an unfair inference to say that perhaps the only time
25 you can't own a gun under this statute is when you're in

1 prison.

2 MR. DuMONT: Well, I -- with respect, I don't
3 think that's right. The States have many laws covering
4 the subject of restoration of rights. Some of them do
5 restore firearms rights, many of them do not restore
6 firearms rights, although they do restore other rights.
7 Some of them don't restore all rights at all. Texas, for
8 instance, never restores the right to serve on a jury.

9 QUESTION: Tennessee certainly restored the
10 rights of one of these petitioners, didn't it?

11 MR. DuMONT: Well, that's not at all clear, Your
12 Honor. Tennessee -- Mr. Beecham had three prior
13 convictions, two State and one Federal. They are in the
14 record in the argument over -- or, in the testimony and in
15 the argument over this issue in the district court.

16 The Tennessee procedure changed in 198 --

17 QUESTION: 6.

18 MR. DuMONT: -- 5, I believe, or 6. Prior to
19 that, if you had a conviction from prior to 1986, you were
20 required to go to a court and get an affirmative order,
21 and there's no evidence that Mr. Beecham ever did that, or
22 that he didn't do it. There's no evidence in the record
23 about that, and as to the Federal conviction, there's no
24 evidence that Tennessee law -- that he ever requested that
25 the Tennessee statute be applied to his Federal

1 conviction.

2 QUESTION: Will you clear up one thing for me,
3 am I correct in assuming that in most, if not all States
4 that have a procedure for the restoration of civil rights,
5 it's not automatic. There has to be some specific action
6 taken by some State official.

7 MR. DuMONT: Well, it really varies all over the
8 lot. In Minnesota, for instance, it's quite automatic.
9 In Tennessee, before 1986 --

10 QUESTION: As soon as he serves the sentence
11 it's restored, is that it?

12 MR. DuMONT: Then all of his general civil
13 rights are restored, although, interestingly, not all of
14 his firearms rights.

15 QUESTION: Well, but -- does that mean that in a
16 State in which it does automatically restore civil rights,
17 that under your opponent's reading of the statute that
18 would mean that that conviction -- well, that would --
19 obviously, it would mean that that would never count,
20 under your reading as well. If you are convicted in
21 Minnesota, you automatically get your rights back after
22 you serve. Then he can own a gun, anywhere in the
23 country.

24 MR. DuMONT: Well, Minnesota is complicated,
25 because Minnesota imposes certain firearms restrictions on

1 felons even though their other civil rights have been
2 restored, so in fact under a different part of the statute
3 the Government does not interpret that as a --

4 QUESTION: Well, he may not be able to own a gun
5 in Minnesota, but the Federal statute would not be an
6 impediment to his ownership of a gun.

7 MR. DuMONT: The Federal statute gives effect to
8 Minnesota's continuing firearm restriction under the last
9 proviso.

10 QUESTION: Well, how about in Tennessee, which
11 is involved here? Post 1986, it's automatic, is it not?

12 MR. DuMONT: Post 1986, it appears to be
13 automatic, at least for State convictions, that's correct.

14 QUESTION: Mr. DuMont, you mentioned the jury
15 situation. Under the jury statute, which refers to the
16 restoration of civil rights, there is no Federal statute
17 providing for that restoration, I believe, is that
18 correct?

19 MR. DuMONT: There is no Federal -- general
20 Federal scheme for restoration of Federal rights.

21 QUESTION: Is the phrase, restore -- well, I
22 shouldn't say restoring civil rights. The phrase in the
23 statute is, civil rights have not been restored. As that
24 phrase is used in the jury statute, it's got to reference
25 back to State law, doesn't it?

1 MR. DuMONT: We don't think so, Your Honor. The
2 language is very similar, although not identical here, but
3 there has been no litigation on this point, first of all.

4 QUESTION: No, but if there's no Federal statute
5 on the restoration of the rights, then how would one's
6 right to serve on a jury -- or, how would one's civil
7 rights be restored for purposes of serving on a jury if
8 not by reference to State law?

9 MR. DuMONT: Well, there are two things I would
10 say in response to that. First of all, the indications in
11 the legislative history of the jury rights statute are
12 that Federal rights used to always depend on State law,
13 and in the 1940's when that statute was originally passed,
14 the explicit intention was to federalize the rules for
15 qualification to sit on a Federal jury.

16 Now, when the statute was later amended in the
17 mid-seventies to change some of the language that relates
18 to this, again, the indications in the legislative history
19 are that what Congress had in mind, they refer
20 specifically to two Federal statutes which they had in
21 mind, both of which are not restoration statutes but in
22 fact expungement statutes, and I think there is also an
23 indication that pardons may have been in consideration.

24 So our position on this would be there's no
25 reason to read these two statutes differently, but the

1 correct reading, in the absence of anything else in the
2 statute to guide us, is that the restoration of rights for
3 both statutes must be accorded by the jurisdiction that
4 rendered the conviction.

5 QUESTION: But I think you're telling me that
6 they would be read differently, because I think you're
7 suggesting that restoration of civil rights under the jury
8 statute might be a restoration by pardon or expungement,
9 whereas it is clear from the text of the firearms statute
10 that restoration cannot be by pardon or expungement
11 because they're separately listed in the statute.

12 MR. DuMONT: But that's why I say the language
13 is not identical, and I think some of the differences may
14 be relevant in the sense that I think the words, civil
15 rights restored, used in the jury qualification statute,
16 may be broader, because they're intended to sweep in a
17 Federal pardon, for instance, or the one instance that I'm
18 aware of where there's a possibility for expungement of
19 the Federal conviction, which --

20 QUESTION: Well, the Federal Government does not
21 take away any civil rights to begin with, does it?

22 MR. DuMONT: Well, it depends largely on what
23 you classify as a civil right. It takes away the jury
24 right, the right to sit on a Federal jury.

25 QUESTION: Under this statute, 1865?

1 MR. DuMONT: Under 1865. There are a variety of
2 occupational disabilities for certain kinds of convictions
3 that have to do with serving on trust funds for pension
4 funds, serving in labor unions, this kind of thing.

5 There are some crimes which -- part of which the
6 penalty is, or may be, that you can't hold Federal office.
7 There are instances where civil rights are --

8 QUESTION: Well, do States eliminate that
9 disability -- those disabilities?

10 MR. DuMONT: I'm aware of no instance under
11 which a State can eliminate one of those disabilities,
12 although the issue may be somewhat unclear under the labor
13 statutes.

14 QUESTION: Well then, the State -- even the
15 State can't restore the civil rights, then.

16 MR. DuMONT: Depending on whether you consider
17 those civil rights for purposes of this statute.

18 Now, it's true that in the case of State
19 convictions, which is -- I ought to emphasize, the vast
20 majority of the felony convictions we're talking about
21 that are covered here are State convictions, which is what
22 Congress had in mind. For purposes of a State conviction,
23 the civil rights restoration language is fairly clear.

24 QUESTION: Mr. DuMont, when Congress -- we know
25 what it meant to do with that first sentence. It meant to

1 overturn Dickerson, right, and the conviction is -- the
2 dimensions of the conviction are determined by the
3 jurisdiction in which the proceedings were held.

4 MR. DuMONT: It meant to overturn Dickerson for
5 convictions that were State convictions, that's correct.

6 QUESTION: Then we get to the second sentence,
7 and everything except for restoration of rights is tied
8 into a particular jurisdiction, expunged, set aside, as
9 Justice Scalia pointed out before.

10 MR. DuMONT: That's correct.

11 QUESTION: When a draft like this appears, is
12 there anybody minding the shop who would look at such a
13 sentence when this legislation is just on the
14 drawingboards, civil rights restored, and say, wait a
15 minute, that one doesn't fit, and maybe the Department of
16 Justice should call the attention of the congressional
17 committee to that misfit?

18 MR. DuMONT: In general we do try to look at
19 pending legislation and point out whatever problems we can
20 identify with it. I wasn't here when that particular
21 statute was --

22 (Laughter.)

23 QUESTION: Not on my watch -- yes, right.

24 MR. DuMONT: -- when that particular statute was
25 vetted by the Department of Justice.

1 QUESTION: Maybe we should adopt a contra
2 preferentem mode of interpretation, and just at least when
3 it's in title 18, simply construe it against the
4 Department.

5 (Laughter.)

6 QUESTION: It might induce more care in these
7 matters.

8 MR. DuMONT: Well, I must say I don't think that
9 even if we focused purely on the language of the statute
10 that there's anything particularly unclear about it,
11 because if you look at the language of the statute and at
12 the legislative history, such as it is, which does not
13 address this particular point, but which does make clear
14 that what Congress was thinking about in response to
15 Dickerson was the Federal treatment of State
16 convictions --

17 QUESTION: Well, how about Mr. Lewin's point
18 that sections (A) and (B) expressly modified the term,
19 offenses, by saying State, or Federal, or both, and then
20 this language after that just doesn't say anything?

21 MR. DuMONT: Well, I think there's a good reason
22 why subsections (A) and (B) distinguish Federal and State,
23 and that is that in (B) when we're talking about
24 distinguishing misdemeanors, really that's just getting at
25 the fact that Federal law had decided to get away from

1 defining these things as felonies.

2 This is traditionally referred to as a felon
3 with a firearm statute, but it doesn't really define it
4 that way, it defines it in terms of crimes punishable by
5 imprisonment for more than a year.

6 This -- (B) is really just intended to take care
7 of State cases, where States still use felony and
8 misdemeanor classifications, and therefore it's something
9 that only applies to a State.

10 Now, in the second two sentences, we would
11 submit that there's nothing narrowing about them that
12 prevents them from applying to both Federal and State
13 convictions, so there's nothing that was necessary to do
14 to distinguish that, but the fact is that that doesn't
15 mean that every part of the laundry list in the second
16 sentence that was added in 1986 -- pardons, expungements,
17 set-asides, or restorations.

18 As Justice Scalia pointed out earlier, not every
19 one of those has to apply to both Federal and State
20 convictions. It's perfectly possible -- well, it is true
21 that there are some States that never restore rights, and
22 yet no one thinks that the restoration of rights language
23 doesn't apply to States because of that, and it may be
24 that the Federal Government simply does not provide a
25 restoration mechanism, but that doesn't mean that the

1 pardon, expungement, and set-aside terms don't apply
2 equally to Federal convictions.

3 QUESTION: As a matter of policy, I can't
4 understand why the Federal -- I mean, if you're trying to
5 conceive of what the plausible intention of whoever wrote
6 this thing was, I find it hard to think why Congress would
7 say, well, so long as the State where he was convicted
8 says he can carry a gun, he can carry a gun anywhere, even
9 in those States that don't allow ex-felons to carry guns,
10 ever. That's a strange disposition.

11 Whereas I -- it would make a lot of sense to
12 say, if the -- I'm not sure it should be the State of
13 residence, but if the State where he's acting, if the
14 State where he possesses the gun, or ships the gun, or
15 receives the gun, if they've said, you know, your civil
16 rights are restored, we don't care, we don't mind
17 felons -- ex-felons owning guns. We believe in
18 redemption. So be it. I can understand that. Why
19 shouldn't we interpret it that way --

20 MR. DuMONT: Well, I think --

21 QUESTION: -- on a State-by-State basis? Where
22 are the -- and that would make more sense from the
23 standpoint of the citizen knowing what the law is. I
24 mean, you know, I'm acting in New York. I read the New
25 York statutes. They say, ex-felons -- you know. Why

1 shouldn't that be the way we interpret it, which isn't
2 residence. It's not quite what the petitioner is saying.

3 MR. DuMONT: I think the reason not to interpret
4 it that way, or as residents, or as the State where -- in
5 the case of a Federal conviction where the prior
6 conviction was rendered, the reason to avoid all those
7 readings is not that they might not make sense under some
8 statutory scheme, it's just that they're not what Congress
9 said when it wrote this statute.

10 Again, we would have two sentences here that
11 were added in 1986. They are two sides of the same coin,
12 and they really address two halves of the same thought.
13 The thought was to give a rendering jurisdiction the power
14 to control what effect its convictions would be given for
15 purposes of the Federal firearms statute.

16 Now, the -- if you look at -- first of all the
17 first sentence explicitly ties in the disabilities here,
18 or the term conviction, to a State where -- or to the
19 jurisdiction where the conviction was rendered, and we see
20 no reason to read those two sentences separately. We
21 think that logical connection ought to carry on through
22 interpretation of the second sentence.

23 Even if you look, as I take it my colleague
24 would have you look, at the second sentence simply by
25 itself, then again, as you pointed out earlier, Justice

1 Scalia, we have three things listed which can only be done
2 by the jurisdiction that has originally rendered the
3 conviction, and then we have a fourth thing. Well, you
4 know, noscitur a sociis, and the logical reading of that
5 fourth --

6 QUESTION: I don't know if it's correct to say
7 that only the jurisdiction which rendered the conviction
8 can set it aside. It can be set aside on Federal habeas.

9 MR. DuMONT: Well, as we acknowledge, that's a
10 possible colloquial exception. Now, it's not technically
11 correct, because technically a Federal habeas judgment
12 doesn't operate on the conviction, the State conviction,
13 it operates on the body of the accused, but one can see
14 that that might have been encompassed there.

15 We think it would -- to read a lot into that
16 would be to let a very small tail wag a very large dog,
17 because the vast majority of set-asides are done as a
18 matter of State law, and by the way, you can see that even
19 more clearly if you think about the fact that if the
20 second sentence weren't there at all and there were no
21 explicit statutory reference to setting aside convictions,
22 we don't think anyone would suggest, and certainly we
23 would not suggest, that the Federal law could make use of
24 a State conviction for purposes of this statute that had
25 been invalidated on a Federal habeas.

1 I think the third thing to observe about the
2 language of the statute is that those two sentences are
3 tied in not only by their simultaneous enactment, and by
4 their adjacency in the text, but by the fact that they
5 both express two halves of one congressional purpose,
6 which, as we've said, is to give the States the power to
7 determine the existence, in the first instance, and the
8 continuing effects for purposes of this law of their own
9 criminal adjudication.

10 As the legislative history says, in the typical
11 case, the Federal conviction rests on a State predicate,
12 and therefore in those cases it makes sense to defer to
13 the State definition of whether that predicate exists or
14 not.

15 Now, the same logic -- the same logic extends to
16 Federal convictions simply by saying that if you have a
17 Federal conviction, then its existence and its continuing
18 effect for purposes of this law are a matter of Federal
19 law, and that, I will point out also, is the part of
20 Dickerson that was not overturned.

21 When Congress addressed Dickerson, it addressed
22 it in the sense of the broad number of cases which rely on
23 State law, but there was no indication that it meant to
24 disturb Dickerson's application to a Federal conviction
25 and the status of a Federal conviction under Federal law.

1 QUESTION: Mr. DuMont, I noticed in your
2 briefing you don't rely to any extent as a background norm
3 on the full faith and credit principle, both article IV
4 and 1738, that says a judgment shall have the same full
5 faith and credit as it has in the jurisdiction of the
6 State from which it is taken.

7 If we're saying that these words -- the meaning
8 is not clear, then that is one general rule set by the
9 Constitution and implemented by statute that judgment is
10 to have the same full faith and credit every place as it
11 has in the jurisdiction where it's rendered.

12 MR. DuMONT: Well, that's correct. It's not
13 entirely clear to me what relevance the full faith and
14 credit rule has to Federal convictions, which are the
15 specific convictions we're dealing with here.

16 QUESTION: Well, don't you think the Supremacy
17 Clause would require the same respect for a Federal
18 judgment that is required by the Full Faith and Credit
19 Clause for a State judgment?

20 MR. DuMONT: One would hope so, although here, I
21 suppose the question is, Congress has spoken to defer a
22 State law in certain instances, and the question would be
23 whether this is one of those instances, but as a
24 background law, that is certainly correct that we think
25 the basic supposition ought to be that Congress would not

1 intend States to be determining the effect of a Federal
2 conviction for purposes of Federal law.

3 QUESTION: What do you think the Congress'
4 reason was for saying that as to State convictions, if
5 they had been set aside, or there had been a pardon,
6 rights were restored, they would not count in deciding
7 eligibility to have a firearm, but the Federal conviction
8 shouldn't be treated that way?

9 MR. DuMONT: Well, I think Congress was
10 concerned that -- as far as I can tell, that in the case
11 of a State conviction where the State had taken some --
12 either did not regard the conviction as sufficiently
13 serious enough to see it as a conviction for purposes of
14 its own collateral consequence rules, or did regard it
15 so -- that way in the initial case, but then had made a
16 determination of some sort that the person's time had been
17 served or that for other reasons the collateral
18 consequences ought to be wiped off, that the Federal
19 Government ought to respect that determination in the
20 realm of firearms disabilities.

21 So that if you had a Tennessee felon who the
22 State of Tennessee had made a judgment was now competent
23 to carry guns, whether he had not been before, the Federal
24 Government ought to defer to that judgment, and I think
25 that's all they were trying to do.

1 QUESTION: So -- but Federal convictions, since
2 there isn't any recognized mechanism for restoring civil
3 rights, that just would be with a person, and you could
4 never get out from under that.

5 MR. DuMONT: Well, that's not entirely true.
6 Congress provided a very specific provision in section
7 925(c) for going to the Secretary of the Treasury, in the
8 case of a Federal conviction, and regaining Federal
9 firearms rights in the face of a Federal conviction, based
10 on the same sorts of judgments about rehabilitation and
11 good character.

12 There's always also the possibility of a
13 presidential pardon.

14 QUESTION: Is it your position that the
15 restoration of any civil right is enough? I mean, what if
16 they restore some but not all?

17 MR. DuMONT: The -- in the context largely of
18 State convictions, the courts of appeals have held -- have
19 focused on three rights: jury rights, the right to hold
20 public office, and the right to vote, and --

21 QUESTION: You need all three of those.

22 MR. DuMONT: You need all three of those, and
23 then there's a separate question about firearms rights.

24 QUESTION: Gotcha.

25 MR. DuMONT: Whether they're -- that's a civil

1 right, or --

2 QUESTION: Well, that's in the statute,
3 unless -- right.

4 MR. DuMONT: Right.

5 I'd just like to dwell briefly on the fact that
6 our rule, as I said, gives us a fairly clear, simple, and
7 administrable system, and one which is grounded in and
8 limited by the statute, and petitioners -- I can, here,
9 stand in admiration of their willingness to embrace the
10 full breadth of their position, because what I understand
11 them to be saying is that we read the statute literally,
12 and that therefore, if any State restores the civil rights
13 of a convicted felon, no matter where his original
14 conviction was, then that restoration is good for purposes
15 of Federal law.

16 QUESTION: No, I don't think they say --

17 QUESTION: Your ruling doesn't -- your
18 interpretation doesn't rule out that interpretation for
19 State vis-a-vis State, does it?

20 MR. DuMONT: Our interpretation does rule out
21 that particular problem, because what we say is, no matter
22 where you are, for purposes of the Federal law you will
23 always look to the civil rights restoration rules of the
24 jurisdiction where you were convicted, whether that be a
25 Federal jurisdiction or a State jurisdiction.

1 Now, it is true that under FOPA as written by
2 Congress there will always be some problems about a court
3 in California having to determine what Idaho law was or
4 what Florida law was because criminals move, people move,
5 and that prior conviction may be from another State.

6 QUESTION: Well, doesn't that also perhaps
7 detract some from the purpose of the statute? If someone
8 has lived in California for 20 years, and California says
9 people who have been convicted of this sort of an offense
10 have civil rights restored, but back in the State where he
11 was convicted they say, no, we don't agree with that,
12 wouldn't it make much more sense to go by the California
13 rule where the person has lived for 20 years than where he
14 was convicted 25 years ago?

15 MR. DuMONT: It might or might not make more
16 sense. Again, we think that that's not what Congress did
17 here. What Congress did was to refer to the
18 jurisdiction -- to the defining ability of the
19 jurisdiction where a conviction was rendered, and then in
20 a second sentence talk about the restoration of civil
21 rights, and we think it's clear from the context and the
22 language that that refers back to the place of the
23 original jurisdiction, which I might point out one could
24 take as being the jurisdiction that has, first the
25 greatest familiarity with the seriousness and the actual

1 details of the original crime, and second, the greatest
2 interest in making sure that its convictions carry
3 whatever kind of weight it chooses to make them carry.

4 QUESTION: Well, Mr. DuMont, can't another
5 State, however, still criminalize this behavior, if it
6 wants to?

7 MR. DuMONT: It certainly --

8 QUESTION: We're dealing with defenses to a
9 criminal -- Federal criminal statute, I suppose, in the
10 Chief Justice's example, but couldn't, on your view
11 California say, we don't care whether you've been
12 pardoned, had civil rights restored, et cetera, by
13 anybody, if you've ever had a conviction for a felony, you
14 can't carry a gun in California?

15 MR. DuMONT: That's absolutely correct, and it
16 merely points out that there may be a disjuncture between
17 State law and Federal law as to your rights to carry
18 firearms no matter where it is that you happen to be when
19 you possess them, and we think that our reading of the
20 statute minimizes those and channels them in the
21 directions that Congress intended.

22 QUESTION: What about an argument that, looking
23 at the name of the statute, the Firearm Owners' Protection
24 Act, and the fact that it no doubt was sponsored by the
25 NRA, which wants to broaden the market for the sale of

1 firearms, that in the case of an ambiguity we should
2 construe it in the light of its general overall purpose to
3 expand the market?

4 MR. DuMONT: Well, I think that --

5 QUESTION: Were you here for the prior argument?
6 Was that a different team?

7 (Laughter.)

8 MR. DuMONT: Without wishing to step outside the
9 record -- I think that one could look at the title of the
10 act. The act was intended to address a Dickerson problem,
11 and the Dickerson problem was that Congress felt
12 insufficient --

13 QUESTION: Well, it clearly also was intended to
14 make more people eligible to buy firearms.

15 MR. DuMONT: If they had been validated for that
16 purpose by the State which had originally handed down
17 their conviction, and I believe the premise on which the
18 NRA and the Congress and everybody else would have been
19 proceeding was that somebody had made a determination that
20 this person, although he had previously been convicted,
21 was now eligible to carry firearms, and Congress took the
22 route of allowing that determination to be made by the
23 jurisdiction that had rendered the conviction.

24 Now, I might point out that actually,
25 incidentally, under the jury selection statute, that the

1 only case interpreting the civil rights restoration
2 language in the jury statute, which you asked about
3 earlier, has held that restoration there can only be
4 accomplished by affirmative act.

5 In other words, somebody actually has to think
6 about it, think about your case, and hand you a piece of
7 paper saying you can carry -- your civil rights are
8 restored, and that's an interpretation that has not been
9 adopted in the main by the courts of appeals for this
10 statute, and would not be helpful to the petitioners in
11 this case.

12 If the Court has no further questions --

13 QUESTION: Thank you, Mr. DuMont.

14 Mr. Lewin, you have 3 minutes remaining.

15 REBUTTAL ARGUMENT OF NATHAN LEWIN

16 ON BEHALF OF THE PETITIONER

17 MR. LEWIN: Thank you, Mr. Chief Justice.

18 First, with regard to the Chief Justice's
19 question about somebody living in California and having an
20 old conviction, Congress could have said, has had civil
21 rights restored by the jurisdiction of conviction.

22 It did not have those words, and that's why we
23 went through several pages in our brief, the most recent
24 decision of this court is the NOW and Scheidler opinion,
25 where this court said that when Congress omits certain

1 words that would limit the breadth of the statute, the
2 statute should be read literally as if those words are not
3 there.

4 I can accept Justice Scalia's suggestion that
5 instead of the State of residence, look at the State where
6 the man is found with the gun, but in that case as well,
7 the Government is wrong, and a special rule for Federal
8 convictions is wrong, and that's the only issue in this
9 case.

10 The issue in this case is, is there a special
11 rule for Federal convictions, and we submit that neither
12 the language nor sensible policy justifies a special rule,
13 and indeed, Justice Scalia said that maybe there should be
14 a provision that title 18 -- a statute should be construed
15 against the Government. That's exactly the Rule of
16 Lenity.

17 Here is Mr. Jones having a document that says,
18 all his civil rules heretofore forfeited are restored.
19 Why should he not think legitimately, if he has that, that
20 he has met the provision of this Federal statute? If the
21 Rule of Lenity is ever to apply, it ought to apply to this
22 kind of a case where if he looked at the statute and
23 looked at his certificate, he thought he was entitled to
24 carry a gun.

25 And the final answer is Congress determined to

1 overrule this Court's opinion in Dickerson. It used
2 language. If the language it used was unfortunate, that's
3 Congress' job to correct. If Congress thinks it's wrong
4 to allow people who are convicted in a Federal court to
5 carry guns, they can go out tomorrow and amend the
6 statute, but this Court ought not to rescue Congress from
7 what it has done with its statute.

8 Thank you.

9 CHIEF JUSTICE REHNQUIST: Thank you, Mr. Lewin.

10 The case is submitted.

11 (Whereupon, at 11:58 a.m., the case in the
12 above-entitled matter was submitted.)

CERTIFICATION

Alderson Reporting Company, Inc., hereby certifies that the attached pages represents an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of The United States in the Matter of:

LENARD RAY BEECHAM, Petitioner v. UNITED STATES

CASE NO.: 93-445

and that these attached pages constitutes the original transcript of the proceedings for the records of the court.

BY *Ann Marie Federico*

(REPORTER)

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