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MEMORANDUM FROM THE DESK OF
C. D. MICHEL

Re: JUDGING THE JUDGES – ILLEGAL FIREARMS IN CALIFORNIA?

Date: June 13, 2011

California has some of the most restrictive and complicated anti-self-defense laws in the nation. Not only do these laws often ban firearms that are legal to possess throughout the rest of the country, they also subject law abiding California residents to felony prosecution for inadvertent possession of firearms that pose no threat to public safety beyond the threat that any firearm presents when misused by a violent criminal.

California's complicated laws often keep firearms that are ideal for self defense and personal protection out of the hands of California residents, or create such confusion that a rigorous legal analysis by both law enforcement and attorneys must be performed to determine a firearm's legality.

Two prime examples: the Taurus Judge handgun line (which is illegal to possess in California), and the Rossi Circuit Judge long gun line (which, for the most part, is legal to possess¹).

I. "TAURUS JUDGE" HANDGUNS

The "Taurus Judge" handgun (below) is a revolver with a rifled barrel and an elongated cylinder that is designed to accept both .45 Colt ammunition and .410 shotshells. Taurus also makes the "Public Defender," a lighter weight version of the "Judge." Taurus also produces a "Raging Judge" that chambers .45 Colt, .410 shotshell, and .454 Casull. For brevity's sake we

¹ The Rossi 28 Gauge Circuit Judge, as discussed below, can be considered an "assault weapon" under California law.

Re: JUDGING THE JUDGES – ILLEGAL FIREARMS IN CALIFORNIA?

Date: June 13, 2011

Page: 2

will refer to all of these handguns as the “Judge.”² Taurus was working on a 28 gauge “Raging Judge” handgun but that firearm has been removed from the Taurus Catalog.³



While these functional and practical handguns are legal under federal law, and under most state laws, a California resident who possesses a “Judge” handgun would face prosecution for being in possession of a “short-barreled shotgun.” Here’s why:

A. Federal Law

1. The Judge Revolver *Is Not* a “Short-Barreled Shotgun” Under Federal Law

Federal law defines a “shotgun” as “a weapon designed or redesigned, made or remade, *intended to be fired from the shoulder* and designed or redesigned and made or remade to use the energy of an explosive to fire *through a smooth bore* either a number of ball shot or a single projectile for each single pull of the trigger.” 18 USC 921(a)(5), emphasis added; see also 26 USC 5845(d).

Federal law defines a “short-barreled shotgun” is “a *shotgun* having one or more barrels less than eighteen inches in length and *any weapon made from a shotgun* (whether by alteration, modification or otherwise) if such a weapon as modified has an overall length of less than

² Recently, other manufacturers have begun to jump into the .45 Colt/.410 shotshell product line. Smith & Wesson now makes a .45 Colt, .45 ACP, .410 2 ½" shotshell revolver named the “Governor.”

http://www.smith-wesson.com/webapp/wcs/stores/servlet/Product4_750001_750051_786049_-1_757767_757751_757751_ProductDisplayErrorView_Y

³ See Taurus’ “What’s New 2011 Catalog” at http://www.taurususa.com/2011newcatalog/?catalog_page=6 (last visited April 19, 2011).

twenty-six inches.” 18 USC 921(a)(6), emphasis added; see also 26 USC 5845(a).

Under these laws, a firearm must first meet the definition of a “shotgun” before it can be defined as a “short-barreled shotgun.” Because the Judge is not “intended to be fired from the shoulder” and has a rifled barrel, the firearm is not a “shotgun” under the federal law definition. And because it is not a “shotgun,” it does not meet the *federal* law definition of a “short-barreled shotgun.”⁴

2. The Judge Revolver is Not An “Any Other Weapon” (AOW) Under Federal Law

An “any other weapon” (AOW) is a firearm that is regulated under the federal National Firearms Act.⁵

An “AOW” is defined as:

- (A) Any weapon or device capable of being concealed on the person from which a shot can be discharged through the energy of an explosive;
- (B) A pistol or revolver having a barrel with a smooth bore designed or redesigned to fire a fixed shotgun shell;
- (C) Weapons with combination shotgun and rifle barrels 12 inches or more, less than 18 inches in length, from which only a single discharge can be made from either barrel without manual reloading; and
- (D) Any such weapon which may be readily restored to fire.

26 USC 5845.

AOWs do *not* include a pistol or a revolver having a rifled bore, or rifled bores, or weapons designed, made, or intended to be fired from the shoulder and not capable of firing fixed ammunition. *Id.* Due to their rifled bores, the Judge handguns do not meet the definition of an AOW, despite being able to discharge shotgun shells.

⁴ The Taurus Judge cannot be defined as a “short-barreled rifle” under federal law either, because it is not a “rifle.” A “rifle” is defined, under federal law, as “a weapon designed or redesigned, made or remade, and *intended to be fired from the shoulder* and designed or redesigned and made or remade to use the energy of an explosive to fire only a single projectile through a rifled bore for each single pull of the trigger.” 18 USC 921(a)(7), emphasis added; see also 26 USC 5845©. The federal definition of “short-barreled rifle” requires that the original firearm to be a “rifle.” 18 USC 921(a)(8); see also 26 USC 5845(a).

⁵ Title 26 of the United States Code section 5801 et seq.

B. California Law

1. The Judge Handguns Are “Short-Barreled Shotguns” Under California Law

California law defines a “shotgun,” similarly to the federal definition; as “a weapon *designed* or redesigned, *made* or remade, and *intended* to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of projectiles (ball shot) or a single projectile for each pull of the trigger.” Cal Pen. 12020(c)(21)⁶ (emphasis added).

But California has its own, unique definition of “short-barreled shotgun.” California Penal Code Section 12020(c)(1) defines “short barreled shotgun” as:

- (A) A *firearm*⁷ which is designed or redesigned to fire a fixed shotgun shell and having a barrel or barrels of less than 18 inches in length.
- (B) A *firearm* which has an overall length of less than 26 inches and which is designed or redesigned to fire a fixed shotgun shell.
- © Any weapon made from a *shotgun* (whether by alteration, modification, or otherwise) if that weapon, as modified, has an overall length of less than 26 inches or a barrel or barrels of less than 18 inches in length.
- (D) *Any device* which may be readily restored to fire a fixed shotgun shell which, when so restored, is a device defined in (A) to ©, inclusive.
- (E) *Any part, or combination of parts*, designed and intended to convert a *device* into a device defined in (A) to ©, inclusive, or any combination of parts from which a device defined in(A) to ©, inclusive, can be readily assembled if those parts are in the possession or under the control of the same person.

Cal Pen. 12020(c)(1)(emphasis added)

Unlike the federal definition of “short-barreled shotgun,” under California law *any firearm* can be a “short-barreled shotgun” if it is designed or redesigned to fire a fixed shotgun

⁶ While this definition is located in the “Dangerous Weapons” section of the Penal Code (section 12020), California law does not define “shotgun” in any other location. A California court that has to determine the legality of the Judge, no doubt, would rely heavily on this definition.

⁷ Under California law a “firearm” is “any device, designed to be used as a weapon, from which is expelled through a barrel, a projectile by the force of any explosion or other form of combustion.” Cal Pen. 12001(b).

Re: JUDGING THE JUDGES – ILLEGAL FIREARMS IN CALIFORNIA?

Date: June 13, 2011

Page: 5

shell and the barrel and/or overall length is too short. Cal Pen. 12020(c)(1)(A) and (B). Under California law it does not matter if the firearm is designed to be fired from the shoulder, and it does not matter if the barrel is rifled or smooth.

Obviously, the Judge handguns are designed, made, and intended, to fire both fixed shotgun shells and .45 caliber cartridges. That is the appeal of the handguns. But, because the firearms are handguns, the firearms do not meet the minimum barrel and/or overall length requirements under California law and are considered “short-barreled shotguns.”

Possessing the Taurus Judge handguns⁸ in California, subjects the owner to felony criminal prosecution for possession of a “short-barreled shotgun.” The offense can be prosecuted as a felony or a misdemeanor. Cal Pen. 12020(a)(1).

II. ROSSI CIRCUIT JUDGE LONG GUNS

Rossi, whose manufacturing and distributing rights were acquired by Forjas Taurus in 2008, has developed a line of long guns with revolving cylinders modeled after the Taurus Judge.



The “.410/45 Colt Circuit Judge,” (above) as the first version was called, chambers both .45 Colt and .410 shotshells like the Taurus Judge but has a solid stock, a 18.5 inch barrel, and an overall length of 38 inches.

Most significantly for purposes of legal analysis, the long gun, according to Rossi, has a rifled barrel that is not interchangeable, and the Rossi .45/.410 Circuit Judge is sold in North America *only* as a rifle. *No smooth bore version* of the Rossi .45/.410 Circuit Judge are imported

⁸ The Taurus Judge also does not meet the requirements for California’s “Unsafe Handgun” laws. California Penal Code section 12125 et seq.

Re: JUDGING THE JUDGES – ILLEGAL FIREARMS IN CALIFORNIA?

Date: June 13, 2011

Page: 6

or sold in North America.⁹

This year Rossi announced a number of new firearms based on variations of the “Circuit Judge” design.¹⁰ Including the following firearms:



The .410 Ga 3" Mag. Circuit Judge and .44 Magnum Circuit Judge.



The .410 Ga. 3" Mag. Circuit Judge Lever Action.

⁹ See attached “Service Bulletin”

¹⁰ See Rossi New 2011 Catalog at: http://www.rossiusa.com/2011catalog/?catalog_page=1. While the catalog contains more firearms than are discussed here, the included examples are selected due to their similarities to the “Circuit Judge” and their ability to illustrate examples of California firearm issues.

Re: JUDGING THE JUDGES – ILLEGAL FIREARMS IN CALIFORNIA?

Date: June 13, 2011

Page: 7



The 28 Gauge Circuit Judge. Unlike the .45/.410 Circuit Judges, the 28 Gauge Circuit Judge comes with a *smooth bore only*.¹¹



.22LR/.22 Magnum Circuit Judge



The .410 Ga. Circuit Judge Tuffy

A. Federal Law

¹¹ See attached "Service Bulletin."

These long guns are legal under federal law because the long guns do not meet the definitions of “short-barreled rifles,” “short-barreled shotguns,” or AOWs. (All definitions discussed above.)

B. California Law

Possessing *most* of the above long guns in California should not subject the possessor to felony criminal prosecution for either illegally possessing a “short-barreled shotgun” or an “assault weapon.”

1. “Short-Barreled Shotguns”

As stated above California law defines a “short-barreled shotgun” five different ways. Cal Pen. 12020(c)(1). None of the firearms in the Circuit Judge line meet the above definitions of a “short barreled shotgun.” All of the firearms have barrels greater than 18 inches and have an overall length greater than 26 inches; the other California definitions for a “short-barreled shotgun” do not apply to the Circuit Judge line at the lengths they are manufactured.¹²

2. “Assault Weapons” / Shotguns

Pertinent to this analysis, California law considers a “*shotgun with a revolving cylinder*” to be an “assault weapon.” Cal Pen. 12276.1(a)(8)(emphasis added). Penal Code section 12276.1(a)(8) defines an “assault weapon” as “[A]ny shotgun with a revolving cylinder.” (Emphasis added) This code section was meant to restrict firearms like the Armsel Striker 12 and the Cobray/SW Street Sweeper (see below).



The

specific

¹² An individual can always modify their shotgun (i.e. shortening the barrel or overall length) to create an illegal firearm.

chapter of the Penal Code defining and containing “assault weapons” (the Roberti-Roos Assault Weapon Control Act of 1989) does not define what constitutes a “shotgun.”

“Shotgun” is however, defined in Penal Code section 12020¹³ as “a weapon *designed or redesigned, made or remade, and intended* to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire *through a smooth bore* either a number of projectiles (ball shot) or a single projectile for each pull of the trigger.” Pen. Code, § 12020(c)(21)(emphasis added).

The Penal Code does reference “shotgun” in one other area. Penal Code section 12021.5 refers to “shotguns” in the context of sentencing enhancements for street gang crimes involving firearms. The section defines “‘detachable shotgun magazine’ as “a device that is designed or redesigned to do all of the following:

- (A) To be attached to a firearm that is designed or redesigned to fire a fixed shotgun shell through a smooth or rifled bore.
- (B) To be attached to, and detached from, a firearm that is designed or redesigned to fire a fixed shotgun shell through a smooth bore.
- (C) To feed fixed shotgun shells continuously and directly into the loading mechanism of a firearm that is designed or redesigned to fire a fixed shotgun shell.”

Pen. Code, § 12021.5(c)(3)

While the section mentions firearms that have both smooth bore or rifled bore barrels, for the actual definition of “*shotgun*” section 12021.5 relies on the above definition of “shotgun” from section 12020. “‘Shotgun’ shall have the same meaning as specified in paragraph (21) of subdivision (c) of Section 12020.” Pen. Code, § 12021.5(c)(6).

Almost any and all firearms may be modified to fire fixed shotgun ammunition and, with enough work, can be re-fitted with a smooth bore. But that does not make the firearm a “shotgun” under California law. The question is arguably one of *design, make, and intent* and whether the firearm was (1) *designed*, (2) *made*, and (3) *intended* to fire a fixed shotgun shell through a *smooth bore*.

¹³ “Under general rules of statutory construction we may, in construing a statute, consider other statutes that might bear on the meaning of the statute at issue. (See *People v. Ruster* (1976) 16 Cal.3d 690, 696, 129 Cal.Rptr. 153, 548 P.2d 353.)” *People v. Corey* (1978) 21 Cal.3d 738, 743; see also *White v. County of Sacramento* (1982) 31 Cal.3d 676, 682; *Wilshire Ins. Co. v. Tuff Boy Holding, Inc.* (2001) 86 Cal.App.4th 627, 636.

Re: JUDGING THE JUDGES – ILLEGAL FIREARMS IN CALIFORNIA?

Date: June 13, 2011

Page: 10

1. The .410/.45 Colt Circuit Judge, the .410 Ga. 3" Mag. Circuit Judge, .410 Ga. 3" Mag. Circuit Judge Lever Action, .410 Ga. Circuit Judge Tuffy Are LEGAL to Import, Purchase, and Possess in California

The Rossi .410/.45 Colt Circuit Judge, the .410 Ga. 3" Mag. Circuit Judge, .410 Ga. 3" Mag. Circuit Judge Lever Action, .410 Ga. Circuit Judge Tuffy should be considered legal to import, purchase, and possess in California.

According to the information from Rossi regarding the Circuit Judge line:¹⁴

- “The “Rossi .45/.410 Circuit Judge is sold in North America only as a rifle”
- “No “smooth bore version of the Rossi .45/.410 Circuit Judge are imported or sold in North America.”
- “Conversion of the Rossi .45/.410 Circuit Judge Rifle to a Smooth Bore Shotgun is impossible because there are no parts available in the United States.
- Due to the complexity of the firearm any conversion from its original configuration would have to be under the supervision of a highly competent gunsmith.

The Circuit Judges listed above are designed, made, and intended to be fired from the shoulder and to use the energy of the explosive in a fixed shotgun shell to fire *through a rifled bore* either a number of projectiles (ball shot) or a single projectile for each pull of the trigger. Because the above Circuit Judges come with a barrel that has a *rifled bore* they cannot meet the definition of a “shotgun” under California law because California’s definition of “shotgun” requires a *smooth bore*.

Since these rifles are not “shotguns,” the fact that they may have a revolving cylinder does not make them illegal “assault weapons.”

Sadly, the California Department of Justice Firearms Bureau no longer renders opinions on the legality of certain firearms. Thankfully, agencies like the Sacramento Police Department have taken it upon themselves to lend guidance to California firearm dealers, distributors, and owners concerning the legality of firearms like the Taurus Circuit Judge .45/.410¹⁵ and certain other firearm related issues.

2. The .22 LR/.22 Magnum Circuit Judge and the .44 Magnum Circuit

¹⁴ See attached “Service Bulletin.”

¹⁵ See attached “Investigations Division Training Bulletin” from the City of Sacramento Police Department.

Re: JUDGING THE JUDGES – ILLEGAL FIREARMS IN CALIFORNIA?

Date: June 13, 2011

Page: 11

Judge are also Legal to Possess Under California Law

Rossi also makes versions of the Circuit Judge that accepts rifle ammunition instead of shotgun shells, the .22 LR/.22 Magnum Circuit Judge and .44 Magnum Circuit Judge. These rifles have revolving cylinders that are too short and are not designed to accept the longer and larger .410 shotgun shells like other versions of the Circuit Judge.

These *rifles* possess revolving cylinders and are legal to possess in California. Unlike shotguns, *rifles* with revolving cylinders, are not classified as “assault weapons” under California law. In addition the .22 LR/.22 Magnum and .44 Magnum Circuit Judges are too long (in barrel length and overall length) to be classified as “short-barreled rifles.” Cal Pen. 12020(c)(2).

3. The 28 Gauge Circuit Judge IS ILLEGAL to Import, Possess, and Purchase within California

The 28 Gauge Circuit Judge unfortunately does fall under the definition of an “assault weapon” making the firearm almost impossible for California residents to purchase and possess legally within the state.

The Rossi 28 Gauge Circuit Judge, according to the “Service Bulletin” (see attached), “is sold as a *smooth bore shotgun only*. It may be illegal to sell in various states or jurisdictions since it is a revolving cylinder shotgun - and is not rifled as the Rossi .45/.410 Rifle.”

Unlike the other versions of the Circuit Judge, the 28 Gauge version, possesses a smooth bore, meaning that it is “a weapon *designed or redesigned, made or remade, and intended* to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire *through a smooth bore* either a number of projectiles (ball shot) or a single projectile for each pull of the trigger” making it a “shotgun” under the definition in section 12020(c)(21). Because it can be considered a “shotgun” and because it has a revolving cylinder, the Rossi 28 Gauge Circuit Judge meets the definition of an “assault weapon” under California law. Cal Pen. 12276.1(a)(8).

CONCLUSION

Due to the broad language used by the California legislature in defining both “short-barreled shotgun” and “assault weapon” the Taurus Judge and the 28 Gauge Rossi Circuit Judge are illegal to possess in California, meeting the definition of “short-barreled shotgun” or “assault weapon,” respectively.

#179039v1<Interwoven> -Taurus Judge and Circuit Judge shotguns#179039v1<Interwoven> -Taurus Judge and Circuit Judge shotguns

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