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"We Didn't Want Some Montana Militia Man As the Poster Boy For the Second Amendment"

As the Supreme Court prepares to hear oral arguments in a new Second Amendment case on March 2, an article from the *Chicago Tribune* has revealed some interesting details about how the lawsuit behind the case was framed to appeal to the broader public.

McDonald v. City of Chicago challenges the city's 28-year-old handgun ban, which remains standing after a similar law in the District of Columbia was overturned almost two years ago in the case of *D.C. v. Heller*. Virginia attorney Alan Gura--who previously argued the Heller case before the Supreme Court--selected the plaintiffs in *McDonald* through a meticulous process. With financial backing from the Second Amendment Foundation, Gura conducted e-mail, phone, and face-to-face interviews with about a dozen Chicagoans. "You want good people who can tell the story well and in a way that the public can connect with," Gura explained.

Gura eventually settled on Adam Orlov a white, 40-year-old libertarian; David Lawson, a white, 44-year-old resident who keeps a collection of old guns outside the city; Colleen Lawson, Lawson's 51-year-old wife who became interested in Second Amendment rights after an attempted burglary at their home in 2006; and lead plaintiff Otis McDonald.

McDonald, a 76 year-old African American, came to Gura's attention after he attended several gun rights rallies in Springfield, where he recalls he was one of the few people there from Chicago and "probably the only black person." For McDonald, self-defense was a primary motive for participating in the lawsuit. "I would like to have a handgun so I could keep it right by my bed, just in case somebody might want to come in my house," he says. McDonald notes that he has been physically threatened in his neighborhood and his house has been burglarized three times.

The loaded shotgun he keeps in his home has apparently not been sufficient to deter such crimes. In fact, criminals have tended to target McDonald's home when he is not present--they have stolen shotguns from the house on multiple occasions. McDonald shrugs at the suggestion that criminals would steal handguns from his home if he prevails before the Supreme Court. "They get all the guns they want anyway," he states equivocally, without explaining how he might limit his own role as a supplier.

Despite his dislike for trigger locks and gun safes, McDonald was an upgrade over Gura's previous lead plaintiff in the *D.C. v. Heller* case. Despite the best efforts of Gura and Cato Institute attorney Robert Levy to screen out "gun nuts" who would be seen as "looney tunes," they got one in lead plaintiff Dick Anthony Heller.

Heller was kept on a short leash with the media before the case was decided- the public knew only that he was a private security guard in the District who bristled at not being able to bring his handgun home from work. After the case was decided in June 2008, however, Heller made his extreme views about the Second Amendment known. On September 18 of that year, he testified before the D.C. Council's Committee on Public Safety and the Judiciary and stated that "law-abiding citizens" shouldn't be subject to burdensome gun laws like background checks and regulations concerning the safe storage of firearms around children. Heller also declared that "ARMED CITIZENS" in their "individual neighborhoods" should be the ones to protect D.C. in case "suicide terrorists DO attack [sic] our city." Heller saw himself as a frontline combatant in this fantasized "terrorist ground war in DC."

Still, plaintiffs like Heller and McDonald at least have clean criminal records, and that is Gura's first priority. The first time in history that a federal appellate court declared the Second Amendment was an "individual right" was in the Fifth Circuit Court of Appeals case of *United States v. Emerson* in 2003. The defendant in that case, Dr. Timothy Joe Emerson, was the subject of a restraining order. He had abused his wife and threatened to kill a friend of hers. During one heated argument, Emerson "cocked [a] pistol and pointed it at his wife and daughter." He was indicted in December 1998 for possessing a firearm while under a protective order, a violation of federal law. The appeals court eventually ruled that the law prohibiting Emerson from possessing firearms was constitutional. And although the court's "individual right" notation about the Second Amendment (in dicta) was a landmark legal win for the gun lobby, it was certainly not one the public could rally behind. Emerson was no poster boy for gun rights with his predilection for violent, unhinged behavior.

Without question, Gura and his colleagues have made significant strides in the past seven years in selecting plaintiffs who can sell their extreme view of the Second Amendment to the mainstream media and American public. This is not only the case with Otis McDonald, but also with the plaintiffs handpicked by Gura to challenge the District of Columbia's current ban on carrying guns in public.

The truth, however, is that even today Emerson remains more typical of plaintiffs seeking to expand the limits of the Second Amendment. Since the *Heller* decision was issued, there have been at least 190 challenges to gun laws and gun prosecutions on Second Amendment grounds. These challenges have included at least 59 cases involving a convicted felon in possession of a firearm, 17 cases of domestic abusers in possession of a firearm, and 22 cases of drug traffickers or substance abusers in possession of a firearm.

Thankfully, almost all of them have failed. Hopefully, the courts--and the American public--will continue to see through the gun lobby's carefully orchestrated PR offensive and draw sensible limits on the scope of the Second Amendment in the interest of public safety. As the author of the gun lobby's beloved amendment once stated, "Liberty may be endangered by the abuses of liberty as well as the abuses of power."

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