

Noli IP Newsletter

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Second Amendment and our Constitutional Right to Bear Arms

By Mariana Paula Noli

As most of us know, the Second Amendment of the U.S. Constitution states: "A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be

moot court competition judge at the University of San Diego, School of Law. This year's problem involved a discussion on the Second Amendment the right to bear arms. Truth be told ever since I



infringed." But understanding all the legal issues relating to "our" constitutional right to keep and bear arms is not a simple matter, even for our Supreme Court justices.

A few weeks ago, I had the opportunity to volunteer as a

passed the California bar exam back in July 2006, I haven't really spent much time dealing with U.S. constitutional law issues in my daily international intellectual property law practice. However, still today after over a decade of practicing law, I find its

So You Want to be a U.S. Lawyer?



Our founder, Ms. Mariana Noli was invited to share with students at **University of California San Diego**, her background and career path as an intellectual property attorney. The informal meeting took place at the Hillel House, located near campus, in La Jolla.



Practitioners in other fields, Mr. Semanchik (Innocent Project) and Ms. Lazur (Procopio) also shared their experiences in criminal law and corporate law practice respectively. Thanks again to Ms. Edelman for inviting Ms. Noli to participate in such a fun event!



principles fascinating and of crucial importance in the foundation of our modern society. Among many of my colleagues and fellow practitioners, there is certainly much disagreement in the different issues that arise, but we all agree in the important role that the U.S. Constitution plays in our government. And let me remind you that most constitutions throughout Latin America and other parts of the world are modeled after the U.S.

I give kudos to the organizers of this year's moot court competition for choosing such a hot and touchy topic for discussion among future lawyers. The tragic killing of 17 people in Parkland, Florida earlier this year has again, rightfully, raised the public debate on whether there needs to be legislation that further restricts the acquisition and use of firearms. Unfortunately, the sad shooting that took place last year in Las Vegas "did not stay in Vegas" showing us that it was not the last mass shooting that we will see in our lifetime.

The moot court problem: Respondent Samuel Malone, a citizen of Evergreen, was convicted of possessing a firearm in public without a proper permit in violation of Penal Code Section 214.230. Malone had a permit to keep the gun in this home but did

not have the permit to carry openly in public. Malone applied for the open carry permit but was still waiting for approval when he purchased the gun. On his way home, he hit traffic and decided to park and wait it out. He left his car and brought his gun with him and was arrested. Malone argues his Second Amendment rights were violated by the arrest, because Section 214.230 is an unconstitutional burden on the right to carry a gun in public. He argues that Section 214.230 fails strict scrutiny because it is overly burdensome and open carrying is a core right. Petitioner, the State of Evergreen, argues that open carriage is not a core right under the Second Amendment, and therefore intermediate scrutiny is the correct standard. The state also argues that Section 214.230 passes muster under intermediate scrutiny. In the tournament, all volunteer moot court judges acting as the United States Supreme Court justices were to address whether Evergreen's gun statute violated Malone's Second Amendment rights when he was arrested for unlawful possession of a firearm.

We were also to decide whether the trial judge violated Malone's Sixth Amendment rights by denying the defense motion to

withdraw and refusing to appoint counsel, an issue I won't be able to go into detail in this article.

Among the nations with the most firearms are Serbia, Yemen, Switzerland, and Saudi Arabia, but none of these countries protect the right to bear arms. Only 3 countries in the world protect the right to bear arms in their constitutions: (1) Mexico, (2) Guatemala, and (3) the United States of America. Although Mexico and Guatemala both have a constitutional right to bear arms, the US is the only country without restrictions on gun ownership in its constitution. The discussion over the right to keep and bear arms inevitably divides people in two groups in real life as well as it did during the moot court competition. As to the Constitutionality of Evergreen Penal Code Section 214.230: (a) what is the appropriate level of scrutiny to apply to determine whether the statute is constitutional? (b) does the statute pass constitutional muster on its face? (c) does the statute pass constitutional muster as applied to respondent?

The students were asked many questions that made them, and us, think about the Second Amendment and the Heller decision. In *District of Columbia v. Heller* in 2008, the

Supreme Court declared a District of Columbia statute unconstitutional insofar it prohibited the possession of a handgun in one's residence for purposes of self-defense. After a historical review and textual analysis of the text, Associate Justice Antonin Scalia concluded that the Second Amendment needs to be understood as an individual right, not conditioned to the presence of a well-regulated militia. The opinion recognizes that this fundamental right is not unlimited, and that nothing in it should be construed as bringing into question traditional prohibitions of criminals or the mentally ill of having access to firearms. In *McDonald v Chicago* in 2010,

the Supreme Court extended the Second Amendment to the states through the Fourteenth Amendment. Nothing in these two opinions preclude Congress and the states from legislating added restrictions to the acquisition of firearms, as long as they do not infringe on the right to keep and bear handguns in one's residence for purposes of self-defense. When it comes to the Second Amendment of the U.S. Constitution, the Supreme Court has avoided setting a constitutional test as it has for so many other constitutional provisions, preferring a case by case analysis with *Heller* and *McDonald* serving as a benchmark. The debate on gun control is not about

constitutional or statutory authority, but rather of political willpower or lack thereof. The right to keep and bear arms is a longstanding, often glorified right protected by the US Constitution. Americans own nearly half of all the civilian-owned guns in the world, and on a per capita basis, the US has far more guns than any other nation.

Thank you to the University of San Diego, School of Law, Paul A. McLennon, Sr. Honors Moot Court Competition and particularly to Mr. Andrew Rodriguez for the invitation to participate in this interesting event.

Internal Revenue Service Announces End of the OVDP (Offshore Voluntary Disclosure Program)

By Paula Brunoro (Brunoro Law)

On March 13, 2018 the Internal Revenue Service ("IRS") announced on its Notice 2018-52 that it will begin to ramp down its amnesty program under the Offshore Voluntary Disclosure Program (OVDP) and **close the program on September 28, 2018.**

The current OVDP started in 2012 and it was later modified in 2014. It allows US taxpayers to voluntarily disclose unreported foreign income and foreign bank accounts, as

well as other financial assets and unreported foreign information returns.

The Streamlined Filing Compliance Procedures, a similar but different version of the Offshore Voluntary Disclosure Program, will remain in place for now. However, the IRS has stated that the end of OVDP is likely to happen at some point in the future. The delinquent FBAR submission procedures and delinquent international information return

submission procedures are also to remain open for the time being.

US citizens and resident aliens with foreign income and foreign financial assets must report them on their Annual Income Tax Return and must file form FinCEN 114, also known as FBARs.

U.S. taxpayers who have undisclosed foreign financial assets can find relevant information on the options that are available to them at

<https://www.irs.gov/individuals/international-taxpayers/options-available-for-u-s-taxpayers-with-undisclosed-foreign-financial-assets>

The implementation of FATCA and the ongoing efforts of the IRS and the Department of Justice to ensure compliance by those with U.S. tax obligations have raised awareness of U.S. tax and information reporting obligations with respect to non-U.S. investments. Because the circumstances of taxpayers with non-U.S. investments vary widely, the IRS offers the following options for addressing previous failures to comply with U.S. tax and

information return obligations with respect to those investments:

1. [Offshore Voluntary Disclosure Program](#);
Note: The Offshore Voluntary Disclosure Program (OVDP) is closing. Refer to the [OVDP FAQs](#) for an outline of the sunset provisions.
2. [Streamlined Filing Compliance Procedures](#);
3. [Delinquent FBAR submission procedures](#); and
4. [Delinquent international information return submission procedures](#).

The IRS encourages taxpayers to consult with professional tax or legal advisors in determining which

option is the most appropriate for them.

For those who have failed to comply with the rules, we urge that you talk to an experienced international tax attorney they can assist you in filing for one of the available programs to avoid hefty penalties in case of an investigation or audit by the IRS. The tax professionals at Brunoro Law are experienced in the matter and can assist you throughout the entire process. Please contact Ms. Paula Brunoro at pbrunoro@brunorolaw.com.

Love: Success Key in the Business World?

Part of our group at Noli IP Solutions, PC participated of the Success Leadership Conference, a one day conference organized by the City of Oceanside for businesses in North County San Diego. After the conference, Ms. Fisher and Ms. Deters shared with the rest of our group the knowledge and experience of the motivational speakers and leaders in our community. **If You Want To Be Successful, You Must Love What You Do.** Thank you ladies for representing our group at the conference.



"I am convinced that the only thing that kept me going was that I loved what I did ... the only way to be truly satisfied is to do great work, and the only way to do great work is to love what you do." – Steve Jobs

"I look into their eyes and try to figure out whether they love the money, or if they love the business ... if they don't love the business, I can't put my money into it. (Then) my job is to make sure that I don't do anything that kills that love of the business." – Warren Buffett