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In Pro Per

June 15, 2017
by cm/ecf

Ms. Molly C. Dwyer
Clerk, United States Court of Appeals
for the Ninth Circuit
95 Seventh Street
San Francisco, CA 94103

RE: *Charles Nichols v. Edmund Brown, Jr., et al* 9th Cir. No.: 14-55873;
Rule 28(j) letter

Dear Ms. Dwyer:

Plaintiff-Appellant Nichols submits *A Practical Treatise on the Criminal Law Volume* 3 – 1819, Published by Edward Earle as supplemental authority under FRAP Rule 28(j).

> "The 1 Jac. I. c. 8 was enacted at a critical period, and intended to remedy an immediate evil. It is said to have been directed against a number of persons, who adopted a method of deadly revenge by wearing short daggers under their clothes, which they were prepared to use on slight provocations, and those frequently sought for by themselves." *Id* at pg 180 [*746].

"[T]hose frequently sought for by themselves" means that those who carried the concealed weapons were the ones who provoked the fight. Prior to the enactment of the Statute, a person who used a concealed weapon to kill another person could plead that he acted in the heat of passion or under the influence of drink and be afforded "the benefit of clergy." Which is to say he escaped being executed.

From the point of enactment onward, in England and the English colonies in America, if one carried a concealed weapon and chose to use it, he would have to present the weapon and hold, giving his opponent the opportunity to arm himself or decline to engage in mutual combat. If he didn't and his opponent died of his wounds within 6 months then the concealed carrier was guilty of willful murder and was executed, he could not be pardoned.

England would repeal the statute in 1828 but by then the states had begun to ban the mere carriage of concealed weapons.

It is the history and tradition of the United States that carrying a concealed weapon is cowardly and/or criminal and that history and tradition predates the ratification of the Second Amendment which is why one would be hard pressed to prove that the Framers of the Second Amendment, and those who voted to enact it into law, believed that concealed carry fell within the scope of the Second Amendment.

The body of this letter contains 349 words.

Sincerely,

/s/ Charles Nichols

Charles Nichols
Plaintiff-Appellant in Pro Per

cc: counsel of record (by cm/ecf)

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A

PRACTICAL TREATISE

ON

THE CRIMINAL LAW;

VOL. III.

CONTAINING

PRECEDENTS OF INDICTMENTS,

&c.

WITH COMPREHENSIVE NOTES ON EACH PARTICULAR OFFENCE, THE PROCESS, INDICTMENT, PLEA, DEFENCE, EVIDENCE, TRIAL, VERDICT, JUDGMENT, AND PUNISHMENT.

PHILADELPHIA:
PUBLISHED BY EDWARD EARLE,
CORNER OF FOURTH AND LIBRARY STREETS.
William Brown, Printer.
1819.

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MURDER ON THE STATUTE OF STABBING.

1 Jac. I. c. 8.

The offence. [*746]

The offence.—The 1 Jac. I. c. 8 was enacted at a critical period, and intended to remedy an immediate evil. It is said to have been directed against a number of persons, who adopted a method of deadly revenge by wearing short daggers under their clothes, which they were prepared to use on slight provocations, and those frequently sought for by themselves. Fost. 298. Its particular object is thus stated in the preamble, which may serve to direct us in its construction: "To the end, that stabbing and killing men on the sudden done and committed by many inhumane and wicked persons, in the time of their rage, drunkenness, hidden displeasure, or other passion of mind, may henceforth be restrained through fear of due punishment to be inflicted on such cruel and bloody malefactors, who heretofore have been emboldened by presuming on the benefit of clergy," after which it proceeds to enact, "that every person which shall stab or thrust any person that hath not then any weapon drawn, or that hath not then first stricken the party which shall so stab or thrust, so that the person so stabbed or thrust shall thereof die within the space of six months then next following, although it cannot be proved that the same was done of malice aforethought, yet the party so offending shall be excluded from the benefit of his clergy, and suffer death as in case of wilful murder." This enactment is followed by a proviso, that it shall not extend to any killing *se defendendo*, by misfortune, or in other manner than aforesaid; nor to manslaughter, in a *bona fide* attempt to preserve the peace; nor to death, happening in chastisement or correction of a child or servant when death was not intended. (*d*) This act was originally but temporary, but by 17 Car. I. c. 4. it is with other statutes continued till some further provision be made respecting it; and as this has never been done, it is in full force at present. It seems, however, to be the better opinion, that it is merely declaratory of the common law, passed to prevent the too indiscriminate compassion of juries, who admitted that* to be an alleviation of homicide which [*747] still left it murder in law. Kel. 55. 1 Hale 456. Fost. 298. And, indeed, it seems exceedingly difficult to discover what this act has rendered capital which was not so on general

(*d*) This last proviso is very singular; for it is difficult to conceive in what way stabbing could occur in lawful correction; and we have seen already that wherever a deadly instrument is used to correct, and death ensues, it is murder at common law, ante 730.

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9th Circuit Case Number(s) 14-55873

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Signature (use "s/" format) s/ Charles Nichols

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