

Approved: 3-10-97
Date

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Senator Lana Oleen at 11:00 a.m. on February 11, 1997 in Room 313-S of the Capitol.

All members were present.

Committee staff present: Mary Galligan, Legislative Research Department
Theresa Kiernan, Revisor of Statutes
Midge Donohue, Committee Secretary

Conferees appearing before the committee:

Eric A. Voth, M.D., Topeka
Ms. Linda Lee Stewart, Safety for Women and Responsible Motherhood, Lenexa
Scott G. Hattrup, Overland Park
J. Stephen Cox, (Legislative Chair, Kansas Peace Officers Association), Chief of Police, Leawood
O. J. McCart, (Kansas Peace Officers' Association), Assistant Chief of Police, Paola Police Department
Loren C. Anderson, (Legislative Committee, Kansas Sheriffs Association), Sheriff of Douglas County, Lawrence
Captain Glenn L. Ladd, Investigation Division Commander, Overland Park Police Department
Sergeant Lane K. Ryno, (Kansas Peace Officers' Association), Emporia Police Department
Mr. Steve Davies, Koch Crime Commission, Topeka

Others attending: See attached list.

Senator Oleen advised that the hearings on **SB 21** and **SCR 1606** would be opened immediately and both opponents and proponents would be heard today. She stated that several individuals were not able to address the committee yesterday and, as she had indicated earlier, individuals who had contacted her prior to yesterday have been assured they will have the opportunity to testify before the committee either today or on the 19th from 11:00 a.m. to 12:30 p.m.

SB 21: Licensure to carry certain concealed weapons
SCR 1606: Proposition to amend article 15 of the constitution of the state of Kansas by adding a new section, relating to certain weapons

Eric A. Voth, M.D., FACP, Topeka, addressed the committee as a proponent of **SB 21** (Attachment #1). He indicated he was speaking in favor of the bill in hopes of dispelling several misunderstandings. The first he said was the assumption that supporters of the act are wide eyed, gun toting crazies who hope to turn the state into the wild west. He said the second misconception is that this legislation will give anyone a right to carry a gun, and the third is that violence would increase. In regard to the latter, he referenced a recent study from the University of Chicago on the effect of concealed carry legislation which he said demonstrated that violent crime dropped in the states that instituted such legislation.

Dr. Voth told the committee it is time the Senate not serve as a bottleneck for this legislation but let law abiding citizens have the right to augment their self protection through a concealed weapons bill.

Senator Oleen responded to Dr. Voth's comment by explaining there had been no request for a hearing last year in the Senate and that, during the entire time the bill was in committee, the sponsor did not request a hearing. Further, she pointed out that the past two years when this issue came to the Senate, it was as a floor amendment which some wanted to adopt without a hearing. Senator Oleen said she welcomed the opportunity for these two bills to have a hearing and that is why Dr. Voth and other conferees were being afforded ample

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time to express their feelings in this regard.

Ms. Linda Stewart, Lenexa, Kansas, a member of Safety for Women and Responsible Motherhood, addressed the committee as an opponent to **SCR 1606 (Attachment #2)**. She said she was appearing before the committee to express her opposition to allowing only certain specified groups to carry concealed firearms. Ms. Stewart stated that such legislation is framed not in the interest of law abiding Kansas citizens and went on to relate two personal experiences she said left her feeling very vulnerable. She told the committee she favors legislation that would guarantee law abiding citizens the right to carry a firearm for personal protection against violent criminal attack outside the home and she asked the Kansas State Senate to move forward with legislation in favor of a right to carry law that would permit citizens to obtain a permit to license a firearm after a complete background check, safety training and education in regard to laws accompanying this choice.

Mr. Scott Hattrup, Overland Park, addressed the committee as a proponent of **SB 21 (Attachment #3)** and in opposition to **SCR 1606 (Attachment #4)**. He asked the committee to read his written testimony on **SB 21** and waived further comment on that particular bill.

In regard to **SCR 1606**, he stated, in its current form, it is a bad resolution, and he pointed out several areas he felt would present problems. He suggested the resolution be rewritten to state that the people have the right to bear arms for their defense and security, in any manner, including concealed carry, for any lawful purpose, which he said would amend the bill of rights in the process. Mr. Hattrup indicated he would support such a resolution.

J. Stephen Cox, Chief of Police, Leawood, appeared as Legislative Committee Chair of the Kansas Association of Chiefs of Police in opposition to **SB 21 (Attachment #5)** and indicated he would briefly summarize his written testimony.

Chief Cox stated that violence, particularly that committed with firearms, is epidemic in this country and allowing citizens to carry concealed weapons is a much more complex issue than it appears. He pointed out that, for whatever reason, people in general are angry and their anger is often accompanied by violence. He noted that making firearms more readily accessible will not make the problem go away and that it was ludicrous to assert that arming more people will reduce the incidence of violence. Chief Cox told the committee that although proponents offer the argument crime has been reduced in states with concealed weapons laws, to his knowledge, no cause and effect relationship has been established. In fact, he pointed out that there is equal scholarly research disputing the findings of the most widely quoted study on the issue.

Chief Cox discussed background checks, saying it is an erroneous assumption that these checks will weed out those unsuitable to be issued permits. He pointed out that much of the information is not documented in police or any other public records and that arrest and conviction records are not centralized in Kansas which makes searches time-consuming and haphazard, at best.

Concerning training and the use of firearms, Chief Cox said the most critical component is judgment which can be clouded by anger, stress, fatigue, medication and chemicals, and he stressed that merely being able to fire a weapon and handle it safely is not sufficient.

The remainder of Chief Cox's testimony touched upon legal considerations in the use of deadly force. He pointed out that it is nonsense to believe Kansas law condones the killing of a person simply because he has entered your home. Chief Cox also discussed personal and public policy considerations in the use of deadly force. Concerning the matter of officer safety, he said the added distraction of an armed citizen simply increases the risks involved.

He concluded his remarks by urging defeat of this legislation or to at least require the issue to be placed before the voters.

O. J. McCart, Assistant Chief of Police, Paola, represented members of the Kansas Peace Officers Association in addressing the committee in opposition to **SB 21, (Attachment #6)**. As spokesperson for the KPOA he expressed deep concern for the concealed carry bill, pointing out that Kansas already has a law in place which allows citizens to carry a firearm as long as it is in plain view. He said he failed to understand the rationale of passing a law that further encumbers access to the weapon by concealing it. Mr. McCart related two incidents in which well trained fellow officers did not survive an armed adversary. He said, if a criminal believes a person might be carrying a concealed weapon, the chance for survival is greatly diminished.

Mr. McCart closed his remarks by saying that, as a DARE teacher, he does not believe more guns is the lesson children need to be hearing; instead he said they should be taught to deal with the pressures and changes in

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society.

Loren C. Anderson, Sheriff of Douglas County, Lawrence, represented the Kansas Sheriffs Legislative Committee in expressing opposition to **SB 21 (Attachment #7)**. Sheriff Anderson spoke about the time and effort devoted by law enforcement personnel in attempting to minimize liability and, at the same time, protect citizens. He pointed out that situations may become deadly if the good samaritan is carrying a concealed weapon, and that the law enforcement officer will have an additional decision to make when responding to situations involving weapons.

Sheriff Anderson remarked that it is premature to consider allowing most citizens to carry a concealed weapon until the current weapons laws have been dealt with successfully; that an effort should be made to decrease the number of weapon-related incidents rather than creating additional opportunities for weapons to be involved.

He asked the committee to consider the serious ramifications of passage of such a law and urged them not to pursue this under the guise of family safety, lower crime rate, or what other states may have.

Captain Glenn L. Ladd, Investigation Division Commander, and a twenty-three year veteran of the Overland Park Police Department, appeared before the committee as a private citizen and a representative of the City of Overland Park and the Overland Park Police Department. In doing so, he expressed strong opposition to **SB 21 (Attachment #8)**. Captain Ladd said he does not believe Kansas needs this law because current laws allow the possession of a handgun in a residence, place of business and, in most places in the state, in a car as long as it is not concealed on one's person. He told the committee that, although he can appreciate the fear and anxiety experienced in the many incidents that have been related, it is rare that he has heard one story where the possession of a weapon would not have been possible under current law. Captain Ladd referenced the many statistics that have been presented from both sides and said either point could probably be proven with the statistics available. He suggested instead that the committee not be concerned with what Texas, California and Florida do but, rather, what Kansans and people from the Mid-west want. He also suggested that time be spent on legislation that would ensure swift and certain punishment for people who endanger our way of life.

The bill, in its present form, he said will allow weapons to be available at times when good people are having their worst moments and result in elevating the potential of an unpleasant situation to a deadly one. He stated that the mere handling of weapons would add another risk of injuring and killing people accidentally.

In regard to training that would be required, Captain Ladd took issue with the ten to fifteen hour requirement, stating this would not be sufficient. He expressed concern over the judgment issue of when to shoot and stressed that carrying a weapon does not automatically make you safe, but presents an additional risk. He urged both sides of the issue to work together to pass laws that would address those who threaten a peaceful way of life and, in doing so, think about Kansans, and not worry about what other states are doing.

Sergeant K. Ryno, Emporia Police Department, offered testimony in behalf of the Kansas Peace Officers Association in opposition to **SB 21** and in support of **SCR 1606 (Attachment #9)**. Sergeant Ryno acknowledged that the KPOA supports the Constitution of the United States and the right to bear arms; however, it questions the need for people to carry concealed weapons.

Sergeant Ryno pointed out several areas in the bill the KPOA feels would present problems. One was the expectations it would place on the Kansas Bureau of Investigation to conduct the background checks; a second was the amount of money allotted in the application fee which he said would not begin to cover expenses. He noted further that the bill has no provision or condition for liability insurance, citing the fact Kansas requires a licensed driver of a motor vehicle to carry liability insurance.

Sergeant Ryno advised the committee the KPOA opposes preemption because it would not allow certain areas or cities to address the problems they may have.

He concluded his testimony by saying the KPOA would support any vote by the people on this issue.

Mr. Steve Davies, Koch Crime Commission, appeared as neither a proponent nor opponent, but rather to offer information pertaining to the Criminal Justice Information System in Kansas. Mr. Davies told the committee about a study the Koch Crime Commission conducted in 1994 which explored what was happening in the criminal justice information system in Kansas. He said the completed study showed the system was slow, inaccurate and that it took approximately six to eight weeks to get data into the system on someone who was charged with a crime in Kansas. The results of the study he said were made available to the Criminal Justice Coordinating Council, which he explained is composed of the Governor, a representative of the Governor, the

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Attorney General, Chief Justice of the Supreme Court, Secretary of SRS, Secretary of Corrections, and the Director of the KBI, with the recommendation it conduct a comparison study. Mr. Davies told the committee this was done and the same results were found: people were being arrested by law enforcement, booked, charged and bailed out, and the information was not in the system. He cited instances where law enforcement would pull an individual over, run a check through their computers, the KBI or their local system, and let the individual go only to find later the subject did have a record. He explained that the same thing was happening with day care centers, adoption centers, judges and the Department of Corrections.

Mr. Davies advised that studies done by the federal government showed that Kansas ranked 44 out of the 50 states in the ability to provide accurate criminal justice information. He did say, however, that steps are being taken to correct these problems by expanding the system so it will be able to handle the demands placed on it by law enforcement and other agencies. He noted the KBI did not have the capability at the present time to meet the guidelines that would be placed upon if this legislation passes in its present form. Mr. Davies recommended that the committee look at this closely, consider the testimony offered by Director Welch and ensure that the KBI has the capability to do appropriate background checks before implementing this legislation.

Senator Oleen asked if someone committed and was convicted of a violent crime in one part of the state whether it would be possible for another part of the state to obtain this information, and Mr. Davies replied it was possible but would depend on where the crime was committed; that it could take as long as six weeks before the information was available.

She then asked if there as a plan in place to move forward with the criminal justice information system in Kansas and, if so, what was the timeframe. Mr. Davies responded that within approximately a two year period the criminal justice information system in Kansas should be at a point where law enforcement will have the data base to obtain information at a proper rate.

Senator Oleen then asked if the current criminal justice information system could provide information on individuals convicted of crimes outside Kansas, and Mr. Davies replied the data is there but Kansas does not have the capability to retrieve this information at the present time.

The meeting adjourned at 12:01 p.m. Hearings on **SB 21** and **SCR 1606** are scheduled to continue on February 19 from 11:00 to 12:30 in Room 313-S.

The next meeting is scheduled for February 12, 1997.

SENATE FEDERAL & STATE AFFAIRS COMMITTEE
GUEST LIST

DATE: 2-11-97

NAME	REPRESENTING
JASON PITENBERGER	BRAD SMOOT
Scott Hattup	Self, Kansas Second Amendment Society
HERB TAYLOR	Kansas Sportsmen's Alliance
Linda Lee Stewart	SWARM and citizen
Jan Uby	SWARM and as a citizen
Stanne Bateman	SWARM & citizen
Maurice Zich	Interfaith Impact
Carl Sears	Interfaith Impact
Tom Hayselden	Kan. Assn. Chief of Police
Steve Cox	Ks Association of Chiefs of Police
GLENN L. LADD	CITY OF OVERLAND PARK
LANE RYNO	EMPORIA POLICE DEPT. & KPOA
Loren C. Anderson	Kansas Sheriff's Assoc.
O. J. McCART	K. P. O. A
Bob Taylor	PSI Companies
Helin Stephens	KPOA / KSA
Judy Morrison	SWARM
James Morrison	citizen
Tommy Tre...	

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DATE: 2-11-97

NAME	REPRESENTING
Steven Davis	Koch Crime Commission
James A. Strasen	Kansas Ecumenical Ministries
John W. Krump	Kansas Ecumenical Ministries
John F. Bradley	
Susan Clemmons	
Anna E. Kildner	
John Ely	myself -
Michael Welton	CHRISTIAN GANTZON OF KS
Lisa Meyer	Kansas Governmental Consulting ref
Grant Denny	Sen. Goodwin's Office
Kurt Weber	Winfield Police Dept
Larry Dobbs	" "
Senator MARK Gilstrap	
John Gilstrap	
Bill Page	KANSAS INTERFAITH IMPACT
Ken Grenz	Ottawa in U.M. Church
Nancy Hammill	Kansas Intergaith Impact
Dawn Reid	KSNA
Janice Nelson Kimball	senator Morris

SENATE FEDERAL & STATE AFFAIRS COMMITTEE
GUEST LIST

DATE: 2-11-97

NAME	REPRESENTING
Cneple Sinto	Rep. Johann Pottkerff (interim)
Jamie Taylor	SWARM
Judy Taylor	SWARM
Eunice [unclear]	self.
Major Steve Gulp	City of Kansas City, Kansas
Hon. Dorney	City of Kansas City, Kansas
Ernie [unclear]	Opposition to Concealed Weapons
Steve [unclear]	U. U. Methodist Ch.
Rev. Mike Poage	Kansas Entertainment IMPACT
David Stroehmann	
MONT GREENE EX-DIR	WICHITA ACTION AGAINST GUN VIOLENCE
Jim Kauf	City of Topeka

SENATE FEDERAL & STATE AFFAIRS COMMITTEE
GUEST LIST

DATE: 2-11-97

NAME	REPRESENTING
<i>Michelle D'Azari</i>	

**TESTIMONY OF
ERIC A. VOTH, M.D., FACP
SB 21**

Mr Chairman, Members of the Senate:

I am speaking today in favor of the concealed weapons legislation in the hopes that I can dispel several serious misunderstandings.

The first misunderstanding is the incorrect assumption that supporters of this act are wide eyed gun-toting crazies who hope to turn the state into the wild west. I was born and raised in Topeka, went to the University of Kansas, and have been back in Topeka for 13 years in medical practice. I am a board certified Internal Medicine and Addiction Medicine specialist. I provide recommendations on drug policy around the world, and have testified as an expert in criminal drug cases. As such, I have had a contract placed on my life, had seven serious death threats, and just generally am an arch enemy of the drug culture. I have also chased a rapist, while carrying a gun, through my back yard in Kansas City during my training after hearing screams. While the woman who was raped (and who was very anti gun) screamed, "kill him, shoot him," I refrained because of my knowledge and the risk of hurting innocent people. My gentle, decent wife at that point requested to learn to shoot, and she will probably also file for a concealed weapon if this bill passes. I wish to have the right to protect myself and my family with a concealed weapon.

The second misconception is that this legislation will give anyone a right to carry a gun. In fact, the legislation creates very clear guidelines for background checks, training, and licensing. What better move than to take people who are probably already carrying a gun, check their backgrounds, train them, license them, and then hold them to high standards of conduct? Nothing in this legislation would increase access for young people to guns. Training on gun safety and managing guns in the home may in fact reduce gun related accidents. The legislation also clearly spells out where and when a weapon can be carried, and continues to keep concealed weapons illegal for those not licensed.

The third misconception is that violence would increase. In fact, a

recent detailed study from the University of Chicago on the effect of concealed carry legislation demonstrated that violent crime dropped in the states who instituted such legislation. Only a tiny fraction of those who have permits lose them to misconduct. A recent study in the Journal of the American Medical Association (1995;273:1759-62) found that not one of the individuals in the study who used a gun in self defense was injured. A 1994 US Dept of Justice report (NCJ-147003 1994) found that one fifth of victims defending themselves with a firearm suffered an injury, compared to almost half of those who defended themselves with weapons other than firearms or had no weapon.

It is time that the Senate not serve as a bottleneck for this legislation. Let law abiding citizens have the right to augment their self protection through a concealed weapons bill.

Thank you.

When offenders fired at victims

• Offenders fired their weapon in 17% of all nonfatal handgun crimes (or about 2% of all violent crimes). In 3% of handgun crimes, about 21,000 a year, the victim was wounded. (An additional annual average of 11,100 were victims of homicide by handgun.) The offender shot at but missed the victim in 14% of handgun crimes.

Self-defense with firearms

- 38% of the victims defending themselves with a firearm attacked the offender, and the others threatened the offender with the weapon.
- A fifth of the victims defending themselves with a firearm suffered an injury, compared to almost half of those who defended themselves with weapons other than a firearm or who had no weapon. Care should be used in interpreting these data because many aspects of crimes — including victim and offender characteristics, crime circumstances, and offender intent — contribute to the victims' injury outcomes.
- In most cases victims who used firearms to defend themselves or their property were confronted by offenders

About three-fourths of the victims who used firearms for self-defense did so during a crime of violence, 1987-92

	Average annual number of victimizations in which victims used firearms to defend themselves or their property		
	Total	Attacked offender	Threatened offender
All crimes	82,500	30,600	51,900
Total violent crime	62,200	25,500	36,700
With injury	12,100	7,300	4,900
Without injury	50,000	18,200	31,800
Theft, burglary, motor vehicle theft	20,300	5,100	15,200

Note: Detail may not add to total because of rounding. Includes victimizations in which offenders were unarmed. Excludes homicides.

who were either unarmed or armed with weapons other than firearms. On average between 1987 and 1992, about 35% (or 22,000 per year) of the violent crime victims defending themselves with a firearm faced an offender who also had a firearm.²

Theft of firearms

- Although most thefts of firearms (64%) occurred during household burglaries, a significant percentage (32%) occurred during larcenies. Loss of firearms through larceny was as likely to occur away from the victim's home as at or near the home. In 53% of the firearm thefts, handguns were stolen.

341,000 incidents of firearm theft occurred per year, 1987-92

Crime in which firearm was stolen	Average annual number of victimizations in which firearms were stolen		
	Total	Handgun	Other gun
Total	340,700	180,500	160,200
Violent crime	7,900	5,300	2,600
Personal theft	56,200	33,900	22,300
Household theft	52,600	31,700	20,900
Household burglary	217,200	105,300	112,000
Motor vehicle theft	6,700	4,400	2,400

Note: Detail may not add to total because of rounding. The table measures theft incidents, not numbers of guns stolen. See text on page 1.

²Because the NCVS collects victimization data on police officers, its estimates of the use of firearms for self-defense are likely to include police use of firearms. Questionnaire revisions introduced in January 1993 will permit separate consideration of police and civilian firearm cases.

Offenders shot at victims in 17% of handgun crimes, 1987-92

	Percent
Shot at victim	16.6%
Hit victim	3.0
Missed victim	13.6
Nongunshot injury	1.6
No physical injury	12.0
Did not shoot at victim	83.4%
Other attack/attempt	19.9
Verbal threat of attack	15.4
Weapon present	46.8
Other threat	.8
Unknown action	.5
Average annual number	699,900

Note: Excludes homicides.

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Linda Lee Stewart
8823 Gallery
Lenexa, KS 66215

Honorable members of the Committee. Thank you for the opportunity to speak with you.

I am here today to express my opposition of Senate Bill 1606 allowing only certain specified groups to carry concealed firearms. Such laws are framed not in the interest of law abiding Kansas citizens.

What about circumstances regarding unlawful assaults and infringements of persons in time of urgency, where immediate appeal cannot be made to the laws, and relief allowed?

I know what it feels like to be vulnerable and invaded in my own home. One morning after returning home from a graveyard shift, I was home alone and asleep in my bed. A phone alarm woke me up. The phone was taken off the hook. At first, I thought it was quite odd, then I realized someone was in my house. While frozen in my bed, a complete stranger entered my room. I could not dial 911, the phone was not available, I was alone, and I was helpless. I felt my life was in danger.

I remember thinking the only thing I had going for me was the previous self-defense training I had. *Head for a crowd. Keep your keys ready to unlock your door, try not to show any fear.* I confronted my perpetrator verbally and by all means forcefully. To my surprise he turned and left.

After the incident, I was then able to dial 911. The police officer who responded told me I was lucky he had left the scene. Apparently, he was going through the neighborhood burglarizing. He had left an elderly couple tied up just a couple blocks away. Yes indeed, I was fortunate. A mother of four children. The important thing is that it made me think about my shift work. Leaving my home late at night. Parking my car and walking to work. I remember the police officer in the self-defense class informing us that pepper spray is considered useless basically for two reasons. 1) You have to get too close to the perpetrator to be effective, placing yourself in danger. 2) Many of the criminals of today are either on drugs or alcohol which renders pepper spray totally ineffective. I suddenly realized how totally unprotected I am...even to this very day.

In broad daylight, I have also experienced very recently, a frightening and intimidating experience. I was on I-35 southbound approximately at 435. This was almost the same location as a female who was raped on the interstate during the day, just a couple of months ago. Another driver harassed me by moving from beside me, then in front of me slowing down while waving to me..then back beside me, and behind me. There was nothing wrong with my car and he proceeded to follow me as I was headed towards

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Olathe. He followed me into Olathe, I was away from my home going to the library. I was scared to stop the car or lead him to my destination. I eventually lost him in traffic.

My point with these two stories is...that female or male, in home or out of your home we are vulnerable to criminal activity.

I am in favor of a law guaranteeing law-abiding citizens the right to carry a firearm for personal protection against violent criminal attack outside the home.

As a law abiding citizen, according to the Constitution of the United States it is my inherent and inalienable right to protect my life, the life of my family, and my property.

President Lincoln said, "Study the Constitution". We would do well to follow the advice of our leaders from history such as President Lincoln. In the Bill of Rights Article II, it states, the right of the people to keep and bear arms, shall not be infringed.

It is impossible for a law which violates the U.S. Constitution to be valid.

I am asking the Kansas State Senate to move forward with legislation in favor of a Right To Carry law which would permit the law abiding citizen to obtain a permit to license a firearm that would include a complete background check, safety training, and education regarding the laws which accompany this choice. All but 7 states now have provisions giving this right to their citizens.

I feel the current law prohibiting us from the right to carry a concealed firearm is punishing the law abiding citizen from the actions of the criminal.

Law abiding Kansas citizens respect the laws of our nation, the state of Kansas, their respective cities, and want peace and safety in their lives.

Thank you.

Testimony before the Kansas Senate Federal and State Affairs Committee
in support of SB 21, February 10-11, 1997

Scott G. Hattrup (*Univ. of Kansas*: B.G.S., 1989; J.D., 1995) is an attorney practicing in Overland Park, Kansas. He co-authored *A Tale of Three Cities: The Right to Bear Arms in State Supreme Courts*, which appeared in the annual state constitutionalism issue of the *Temple Law Review*, volume 68, page 1177, in fall 1995. This article was republished in volume 8, fall 1996, of the *Journal on Firearms and Public Policy*, an annual review of important articles regarding the right to bear arms published by the Second Amendment Foundation. Mr. Hattrup has testified before the Kansas House Federal and State Affairs Committee during the 1995 and 1996 legislative sessions.

SB 21 in its current form supports the concept of family and self-protection, and I therefore **support** it.

Kansans are responsible citizens and deserve the opportunity to protect themselves from criminals. SB 21 provides a means by which Kansans will be able to obtain training in the safe, responsible use of a firearm, and learn how and when firearms are properly used. Under this bill, training classes will be provided by those who are knowledgeable in firearms usage and have satisfied the Kansas Bureau of Investigation that they know the legal standards for self-defense. (Sections 16-18.) This will greatly benefit individuals like a client of mine who found herself in a very dangerous situation.

Because of attorney-client confidentiality, and in order to protect my client's privacy, I cannot tell you her real name or facts which would identify her. I would like to share with you the core of her situation so that you realize this is a very real problem for many law-abiding voters in Kansas.

Amy (not her real name) is a divorced woman who found herself in an abusive relationship with a boyfriend who had a real temper. Amy got tired of the verbal and physical abuse and decided to call her ex-husband, with whom she remained friends, to see whether he could help her move away. While Amy was on the phone with her ex-husband, her boyfriend overheard her planning to leave him.

The boyfriend gave Amy five minutes to get off the phone, telling her that she would regret it if she were not off the phone when he said so. While Amy desperately tried to explain the situation on the phone, the boyfriend went into another room. She heard him rummaging around for something and yelling, "You've got four minutes to get off the phone . . . three minutes . . . two minutes!" By the time there was only one minute remaining on the boyfriend's schedule, he came back into the room with the phone, now holding a shotgun. "I told you to get off the phone," he yelled, swearing at her, pumping the shotgun for emphasis. She saw a loaded round drop to the floor as her boyfriend pumped another round into the chamber of the shotgun.

Amy grabbed a kitchen knife and her keys and retreated to a bedroom. She locked the door behind her, blocking her boyfriend from entering. He pounded on the door, and then told Amy he was leaving. He yelled at her on the way out, "You'll regret this!"

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Amy cried herself to sleep, her house and car keys under her pillow, and the kitchen knife beside her bed. Amy was awakened from her sleep about 2:00 a.m. by policemen in her bedroom. She learned later that her boyfriend had called the police first, telling them that she had threatened him with the knife. The boyfriend had given the police the key to her house. He watched and laughed as she was taken away to jail for aggravated assault. She remembered that he had once told her, "You'll never win as long as I get to the cops first. They'll believe whoever calls them first."

Amy's situation has improved somewhat. The charges against her were dropped when her former boyfriend failed to show for trial. The bad news is that he is still somewhere near her home. She doesn't know where, but she still finds notes from him stuck to her door, or some vandalism to her car.

Amy asked me whether it was possible for her to obtain a permit to carry a firearm for self-protection. I explained that she could get safety training, but her options for carrying a firearm were very limited. She could theoretically carry in an open holster on her hip, but then her boyfriend would just shoot her from a distance, that is, if the local police did not arrest her for creating a public disturbance with her firearm. The other option was that she could carry concealed, which would be illegal, and for which she could be convicted and spend time in jail. I'm not sure what Amy decided to do, but I know she still lives in fear of her boyfriend coming back to finish the job he threatened with the shotgun.

SB 21 would help alleviate Amy's situation. Its safety and training class would help teach her how to use a firearm for self-protection. Rather than having to call the police for assistance every time she hears a twig snap in her back yard, or hears the walls of her house creaking in the wind, Amy and thousands of women like her could learn to effectively protect themselves and their children.

SB 21 is also self-funding. Those applying for a license will pay \$140 per application. This money will be used by the Kansas Bureau of Investigation to fund the start-up and administration costs of the licensing system. Annually, the balance of this fund is to be transferred to the state crime victims compensation fund. (Section 23.)

The fiscal note prepared for 1996 HB 2885 indicated an estimated 15,000 applicants in the first year. At \$125 per applicant, that bill would have generated \$1.5 million for the KBI budget against \$168,000 in annual expenses. That is a surplus of more than \$1.3 million annually. HB 2885 would have generated an additional \$375,000 for local sheriffs. The balance of this money after expenses was to be retained by the KBI and the local sheriffs. There was some discussion about upgrading the KBI's computer system for state-wide law enforcement with this money. This would benefit county attorneys in the investigation of crimes. Some of the sheriffs consulted about the bill also expressed an interest in using their money to obtain upgraded equipment, such as bullet-resistant vests in counties which do not currently have them. If we can assist law-enforcement officials through better investigation equipment, rather than cleaning up after crime, we can save lives and prevent crime.

If the committee has the opportunity, it would benefit the law-enforcement officers in this state to use the balance of the funding for SB 21 to assist the KBI and local sheriffs. If the \$140 application fee were to be split among the KBI and local sheriffs, assuming the same 15,000 applicants, and a \$100/\$40 split, the KBI would receive the same \$1.5 million annually, while the local sheriffs would receive \$600,000 annually. This money would really benefit law enforcement in Kansas. I urge you to review the fiscal impact of SB 21 with this in mind.

I urge your support for SB21. When you vote on this bill, remember Amy and the other women and children of Kansas who may become victims of crime without it.

Testimony before the Kansas Senate Federal and State Affairs Committee
in opposition to SCR 1606, February 10-11, 1997

Scott G. Hatstrup (*Univ. of Kansas*: B.G.S., 1989; J.D., 1995) is an attorney practicing in Overland Park, Kansas. He co-authored *A Tale of Three Cities: The Right to Bear Arms in State Supreme Courts*, which appeared in the annual state constitutionalism issue of the *Temple Law Review*, volume 68, page 1177, in fall 1995. This article was republished in volume 8, fall 1996, of the *Journal on Firearms and Public Policy*, an annual review of important articles regarding the right to bear arms published by the Second Amendment Foundation. Mr. Hatstrup has testified before the Kansas House Federal and State Affairs Committee during the 1995 and 1996 legislative sessions.

SCR 1606 in its current form is a bad resolution, and I **oppose** it. It has several problems:

SCR 1606 IS ALREADY A KANSAS STATUTE

SCR 1606 is based on a Kansas law, Kansas Statutes Annotated 21-4201. The resolution is taken almost verbatim from sections (b) and (c) of that law. If that law were perfect, it could be enacted as a constitutional provision without any change. However, 21-4201 has been amended 8 times in the last 18 legislative sessions, 3 times in the last 5 sessions. To assume that such a frequently amended statute is "perfect" enough to enact as a constitutional provision borders on foolishness. Please refer to the attached copy of K.S.A. § 21-4201, and note the "history" section of this law. Compare the selected text with this resolution.

Perfection in such a frequently amended law is important because of the requirements to amend, when necessary. If the proposed language remains a statute, amendment is possible by a vote of one more than half the Kansas Senate, a similar amount in the House, and approval by the Governor. If the language becomes a section of the Kansas Constitution, amendment is only possible by a vote of 2/3 of the Kansas Senate, 2/3 of the Kansas House, and then the approval of more than half the voters in the next general election. Do we really want to make it this difficult and expensive to fix problems that become apparent in this statute? It would cost less taxpayer money and be more efficient to leave this statute as a statute.

SCR 1606 AMENDS THE WRONG SECTION OF THE KANSAS CONSTITUTION

This resolution seeks to amend article 15 of the Kansas Constitution. That article is entitled "Miscellaneous" provisions. The article contains provisions related to the administration of government, lotteries and other gambling, the rights of women, the homestead exemption, liquor by the drink, and right-to-work. Article 15 does not contain the Kansas right to bear arms; that right is listed in the Kansas Bill of Rights § 4. This resolution seeks to amend the right to bear arms. If the Senate Committee is going to consider this amendment, can it at least cite the proper section of the Kansas Constitution?

SCR 1606 IS AN ADMISSION THAT THE KANSAS BILL OF RIGHTS ALLOWS
THE CARRY OF FIREARMS FOR ANY LAWFUL PURPOSE

Please refer to the attached copy of the Kansas right to bear arms. The Kansas

Sen. Federal & State Affairs Comm
Date: 2-11-97
Attachment: #4

Constitution guarantees that, "The people have the right to bear arms for their defense and security. . ." This provision is explicit in what it allows.

The Kansas Constitution guaranteeing the right to bear arms is one of forty-three state constitutions which do so. A forty-fourth state, Wisconsin, is currently in the process of amending its constitution to protect the right to bear arms. This right is one of the more common civil liberties guaranteed by state constitutions. Please refer to the attached pages from the law review article I co-authored. These pages give the actual text of each of the forty-three state provisions protecting the right to bear arms. A complete copy of the article is contained in the orange book contained with your materials, starting on page 109.

Of the forty-three state constitutions guaranteeing the right to bear arms, fifteen make a specific provision for regulating the manner of carrying firearms, only nine of which specifically refer to the regulation of "concealed" firearms. Kansas is not one of the states which allows the regulation of concealed firearms; it has omitted such a restriction. Compare Kansas right to bear arms with that of Colorado, Idaho, Missouri, or New Mexico and you will see the restrictions of which I speak. Since the law presumes that what is not prohibited is allowed by its omission, the Kansas constitution therefore allows the carrying of concealed firearms.

Or, is this certain? Does the Kansas constitution allow the carrying of concealed firearms? SCR 1606 attempts to amend the Kansas Constitution to prohibit this right from being exercised. If Kansans can carry concealed firearms for self-protection, why is this committee attempting to take away that civil right? If Kansans cannot now carry concealed firearms, why is this resolution being proposed? If Kansans cannot now carry concealed firearms, SCR 1606 is inappropriate at best, redundant at worst. The committee has drafted a Catch-22 resolution. It should fail.

SCR 1606 PUTS FORTH A NEGATIVE RESOLUTION

In its current form, SCR 1606 attempts to put a restriction on the right to bear arms. Its main proponent has publicly stated that he supports putting the concept of citizens carrying firearms for self-defense to a public vote. Yet, the resolution is negatively phrased as follows, "No person shall carry a concealed firearm, except that such prohibition shall not apply to . . ." How is this resolution putting the concept of firearms carry to a public vote? It is hypocritical to state publicly that you favor a vote on an issue, and then put forth a resolution phrased this way.

If the resolution passes, citizens will not be able to effectively carry firearms for self-defense. If the resolution fails, then what? Will concealed carry be allowed? I think not. The bias of the main proponent of this resolution shows in the drafting.

If the committee truly is interested in putting this concept to a public vote, a better method would be to draft the resolution as follows: "The people have the right to bear arms for their defense and security, in any manner, including concealed carry, for any lawful purpose," amending the Kansas Bill of Rights § 4 in the process. I would support that resolution.

shall be invalid by any court for any reason. It shall be presumed that this act would have been passed by the legislature without such invalid section, subsection, paragraph or provision, and such finding or construction shall not in any way affect the remainder of this act.

History: L. 1996, ch. 267, § 12; July 1.

Article 40.—CRIMES INVOLVING VIOLATIONS OF PERSONAL RIGHTS

21-4004.

CASE ANNOTATIONS

3. Section construed to require actual malice in matters of public concern; section not overbroad. *Phelps v. Hamilton*, 59 F.3d 1058, 1070 (1995).

Article 41.—CRIMES AGAINST THE PUBLIC PEACE

21-4101.

CASE ANNOTATIONS

16. Noted in discussion of constitutional vagueness challenge to 21-3438. *State v. Bryan*, 259 K. 143, 147, 910 P.2d 212 (1996).

Article 42.—CRIMES AGAINST THE PUBLIC SAFETY

21-4201. Criminal use of weapons. (a) Criminal use of weapons is knowingly:

(1) Selling, manufacturing, purchasing, possessing or carrying any bludgeon, sandclub, metal knuckles or throwing star, or any knife, commonly referred to as a switch-blade, which has a blade that opens automatically by hand pressure applied to a button, spring or other device in the handle of the knife, or any knife having a blade that opens or falls or is ejected into position by the force of gravity or by an outward, downward or centrifugal thrust or movement;

(2) carrying concealed on one's person, or possessing with intent to use the same unlawfully against another, a dagger, dirk, billy, blackjack, slung shot, dangerous knife, straight-edged razor, stiletto or any other dangerous or deadly weapon or instrument of like character, except that an ordinary pocket knife with no blade more than four inches in length shall not be construed to be a dangerous knife, or a dangerous or deadly weapon or instrument;

(3) carrying on one's person or in any land, water or air vehicle, with intent to use the same unlawfully, a tear gas or smoke bomb or projector

or any object containing a noxious liquid, gas or substance;

(4) carrying any pistol, revolver or other firearm concealed on one's person except when on the person's land or in the person's abode or fixed place of business;

(5) setting a spring gun;

(6) possessing any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm;

(7) selling, manufacturing, purchasing, possessing or carrying a shotgun with a barrel less than 18 inches in length or any other firearm designed to discharge or capable of discharging automatically more than once by a single function of the trigger;

(8) possessing, manufacturing, causing to be manufactured, selling, offering for sale, lending, purchasing or giving away any cartridge which can be fired by a handgun and which has a plastic-coated bullet that has a core of less than 60% lead by weight; or

(9) possessing or transporting any incendiary or explosive material, liquid, solid or mixture, equipped with a fuse, wick or any other detonating device, commonly known as a molotov cocktail or a pipe bomb.

(b) Subsections (a)(1), (2), (3), (4) and (7) shall not apply to or affect any of the following:

(1) Law enforcement officers, or any person summoned by any such officers to assist in making arrests or preserving the peace while actually engaged in assisting such officer;

(2) wardens, superintendents, directors, security personnel and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of crime, while acting within the scope of their authority;

(3) members of the armed services or reserve forces of the United States or the Kansas national guard while in the performance of their official duty; or

(4) manufacture of, transportation to, or sale of weapons to a person authorized under subsections (b)(1), (2) and (3) to possess such weapons.

(c) Subsection (a)(4) shall not apply to or affect the following:

(1) Watchmen, while actually engaged in the performance of the duties of their employment;

(2) licensed hunters or fishermen, while engaged in hunting or fishing;

(3) private detectives licensed by the state to carry the firearm involved, while actually engaged in the duties of their employment;

(4) detectives or special agents regularly employed by railroad companies or other corporations to perform full-time security or investigative service, while actually engaged in the duties of their employment;

(5) the state fire marshal, the state fire marshal's deputies or any member of a fire department authorized to carry a firearm pursuant to K.S.A. 31-157 and amendments thereto, while engaged in an investigation in which such fire marshal, deputy or member is authorized to carry a firearm pursuant to K.S.A. 31-157 and amendments thereto; or

(6) special deputy sheriffs described in K.S.A. 1996 Supp. 19-827 who have satisfactorily completed the basic course of instruction required for permanent appointment as a part-time law enforcement officer under K.S.A. 74-5607a and amendments thereto.

(d) Subsections (a)(1), (6) and (7) shall not apply to any person who sells, purchases, possesses or carries a firearm, device or attachment which has been rendered unserviceable by steel weld in the chamber and marriage weld of the barrel to the receiver and which has been registered in the national firearms registration and transfer record in compliance with 26 U.S.C. 5841 *et seq.* in the name of such person and, if such person transfers such firearm, device or attachment to another person, has been so registered in the transferee's name by the transferor.

(e) Subsection (a)(8) shall not apply to a governmental laboratory or solid plastic bullets.

(f) It shall be a defense that the defendant is within an exemption.

(g) Violation of subsections (a)(1) through (a)(5) or subsection (a)(9) is a class A nonperson misdemeanor. Violation of subsection (a)(6), (a)(7) or (a)(8) is a severity level 9, nonperson felony.

(h) As used in this section, "throwing star" means any instrument, without handles, consisting of a metal plate having three or more radiating points with one or more sharp edges and designed in the shape of a polygon, trefoil, cross, star, diamond or other geometric shape, manufactured for use as a weapon for throwing.

History: L. 1969, ch. 180, § 21-4201; L. 1978, ch. 365, § 1; L. 1981, ch. 145, § 1; L. 1982, ch. 135, § 2; L. 1982, ch. 136, § 1; L. 1986, ch. 126,

§ 1; L. 1992, ch. 298, § 67; L. 1993, ch. 291, § 146; L. 1996, ch. 149, § 4; July 1.

CASE ANNOTATIONS

17. No error in trial court's refusal to instruct jury on unlawful use of weapons as a lesser included offense of aggravated weapons violation. *State v. Sanders*, 258 K. 409, 417, 904 P.2d 951 (1995).

18. Section held not to be unconstitutionally vague or overbroad. *State v. Neighbors*, 21 K.A.2d 824, 826, 908 P.2d 649 (1995).

21-4202.

CASE ANNOTATIONS

11. No error in trial court's refusal to instruct jury on unlawful use of weapons as a lesser included offense of aggravated weapons violation. *State v. Sanders*, 258 K. 409, 417, 904 P.2d 951 (1995).

12. Trial court's failure to give instruction limiting use of prior crimes evidence where defendant's credibility in issue held harmless error. *State v. Denney*, 258 K. 437, 443, 905 P.2d 657 (1995).

21-4203. Criminal disposal of firearms.

(a) Criminal disposal of firearms is knowingly:

(1) Selling, giving or otherwise transferring any firearm with a barrel less than 12 inches long to any person under 18 years of age;

(2) selling, giving or otherwise transferring any firearms to any person who is both addicted to and an unlawful user of a controlled substance;

(3) selling, giving or otherwise transferring any firearm to any person who, within the preceding five years, has been convicted of a felony, other than those specified in subsection (b), under the laws of this or any other jurisdiction or has been released from imprisonment for a felony and was found not to have been in possession of a firearm at the time of the commission of the offense;

(4) selling, giving or otherwise transferring any firearm to any person who, within the preceding 10 years, has been convicted of a felony to which this subsection applies, but was not found to have been in the possession of a firearm at the time of the commission of the offense, or has been released from imprisonment for such a crime, and has not had the conviction of such crime expunged or been pardoned for such crime; or

(5) selling, giving or otherwise transferring any firearm to any person who has been convicted of a felony under the laws of this or any other jurisdiction and was found to have been in possession of a firearm at the time of the commission of the offense.

(b) Subsection (a)(4) shall apply to a felony under K.S.A. 21-3401, 21-3402, 21-3403, 21-3404, 21-3410, 21-3411, 21-3414, 21-3415, 21-

74. Publication service alone insufficient notice to satisfy requirements hereof where names and addresses of adverse parties known. *Federal Nat'l Mtg. Ass'n v. Beard*, 8 K.A.2d 371, 659 P.2d 232 (1983).

75. Cited in case upholding the constitutionality of 44-706. *Leiker v. Employment Security Bd. of Review*, 8 K.A.2d 379, 381, 382, 659 P.2d 236 (1983).

76. Act transferring county hospital assets to private enterprise (19-18,133, 19-18,134) is for public purpose and not a prohibited special privilege. *Ulrich v. Board of Thomas County Comm'rs*, 234 K. 782, 788, 790, 676 P.2d 127 (1984).

77. Where names and addresses of adverse parties are known or easily ascertainable, notice of pending proceedings by publication service alone held not sufficient; retrospective application of appellate court decision considered. *Giles v. Adobe Royalty, Inc.*, 235 K. 758, 675 P.2d 900 (1984).

78. Denying good time credits for class A felony incarceration (22-371(b)) rationally related to valid legislative purpose. *Olson v. Maschner*, 10 K.A.2d 289, 697 P.2d 893 (1985).

79. Statute (2-2457) requiring notice to county attorney before suing for pesticide application damages unconstitutional. *Barr v. Terminix Int'l, Inc.*, 237 K. 82, 84, 697 P.2d 1276 (1985).

80. Statute (2-2457) requiring notice to county attorney before suing for pesticide application damages unconstitutional. *Ernest v. Falser*, 237 K. 125, 127, 134, 697 P.2d 870 (1985).

81. Exemption (8-1911) from vehicle weight limitations (8-1908) not a violation of equal protection clauses. *State v. Moore*, 237 K. 523, 525, 534, 701 P.2d 684 (1985).

82. Criteria for tax exemptions reviewed; industrial revenue bond 10-year exemption (79-201a Second) constitutional. *State ex rel. Tomasic v. City of Kansas City*, 237 K. 572, 582, 584, 701 P.2d 1314 (1985).

83. Fact that automobile passenger generally owes no duty to others not a violation of equal protection. *Akins v. Hamblin*, 237 K. 742, 749, 750, 703 P.2d 771 (1985).

84. Collateral source statute (60-3403) rationally related to legitimate state purpose and is constitutional. *Ferguson v. Garmon*, 643 F.Supp. 335, 336, 342 (1986).

85. Unanimity requirement of county board for incorporation of city under 15-123 violates neither equal protection nor substantive due process concepts. In re *Application for Incorporation as City*, 241 K. 396, 397, 399, 400, 401, 736 P.2d 875 (1987).

86. Cited; statute (60-3403) abrogating collateral source rule in medical malpractice liability actions violates Kansas equal protection clause. *Farley v. Engelken*, 241 K. 663, 665, 678, 740 P.2d 1058 (1987).

87. Cited by dissent where majority denied tort action for retaliatory discharge to worker protected by collective bargaining agreement. *Armstrong v. Goldblatt Tool Co.*, 242 K. 164, 177, 747 P.2d 119 (1987).

§ 3. Right of peaceable assembly; petition.

The people have the right to assemble, in a peaceable manner, to consult for their common good, to instruct their representatives, and to petition the government, or any department thereof, for the redress of grievances.

History: Adopted by convention, July 29,

1859; ratified by electors, Oct. 4, 1859; L. 1861, p. 48.

Research and Practice Aids:

Constitutional Law ¶ 91.
C.J.S. Constitutional Law § 214.
Am. Jur. 2d Constitutional Law §§ 329 to 331, 353 to 355.

Law Review and Bar Journal References:

"Interpreting the State Constitution: A Survey and Assessment of Current Methodology," Steve McAllister, 35 K.L.R. 593, 606 (1987).

CASE ANNOTATIONS

1. Association of railroad employees; negotiations with employer; section not violated. *Flynn v. Brotherhood of Railroad Trainmen*, 111 K. 415, 419, 207 P. 829.

2. Chief arbiter of public policy in this state is the legislature. *State, ex rel., v. Board of Education*, 122 K. 701, 708, 253 P. 251.

§ 4. Bear arms; armies. The people have the right to bear arms for their defense and security; but standing armies, in time of peace, are dangerous to liberty, and shall not be tolerated, and the military shall be in strict subordination to the civil power.

History: Adopted by convention, July 29, 1859; ratified by electors, Oct. 4, 1859; L. 1861, p. 48.

Research and Practice Aids:

Militia ¶ 1, 2.
Hatcher's Digest, Carrying Weapons § 1.
C.J.S. Militia § 1 et seq.

CASE ANNOTATIONS

1. No limitation on power to prohibit promiscuous carrying of arms. *Salina v. Blaksley*, 72 K. 230, 83 P. 619.

2. K.S.A. 21-2611 held constitutional; legislature has power to define what constitutes crime. *State v. Bolin*, 200 K. 369, 370, 436 P.2d 978.

3. Section confers right to bear arms to the people as a collective body; does not prohibit enactment of laws prohibiting promiscuous carrying of arms. *City of Junction City v. Lee*, 216 K. 495, 497, 532 P.2d 1292.

4. City ordinance prohibiting anyone from carrying firearms within city limits held unconstitutionally broad; judgment affirmed. *City of Junction City v. Mevis*, 226 K. 526, 530, 601 P.2d 1145.

§ 5. Trial by jury. The right of trial by jury shall be inviolate.

History: Adopted by convention, July 29, 1859; ratified by electors, Oct. 4, 1859; L. 1861, p. 48.

Cross References to Related Sections:

Grand juries, see ch. 22, art. 30.
Trials in criminal proceedings, see ch. 22, art. 34.
Jury service and selection of jurors, see 43-155 et seq.
Trial of civil actions in district court, see 60-238, 60-239, 60-247 to 60-253.
Trial of civil actions in courts of limited jurisdiction, see 61-1716.

Right to speedy public trial by impartial jury in criminal prosecutions, see Bill of Rights, Kan. Const., § 10.

Research and Practice Aids:

Jury ¶ 9 et seq.
Hatcher's Digest, Juries § 14.
C.J.S. Juries § 9 et seq.

Law Review and Bar Journal References:

"Plea Bargaining-Justice Off the Record," Robert L. Heath, 9 W.L.J. 430 (1970).

Cited in comment concerning constitutionality of the six-man jury in Kansas, *Jay W. Vander Velde*, 12 W.L.J. 249, 250 (1973).

"Civil Juries: Recent Legislation Allowing Nonunanimous Verdicts," Thomas J. Koehler, 18 W.L.J. 269, 281, 285 (1979).

"Caps, Crisis, and Constitutionality - Evaluating the 1986 Kansas Medical Malpractice Legislation," Elizabeth Schartz, 35 K.L.R. 763, 810 (1987).

CASE ANNOTATIONS

1. Verdict of jury must be verdict of each individual juror. *Bowman v. Wheaton*, 2 K.A. 581, 584, 44 P. 750.

2. Superadded conditions of recognition not cause for dismissal on appeal. *City of Kansas City v. Hescher*, 4 K.A. 782, 792, 46 P. 1005.

3. Applied only to cases so triable at common law. *Kimball et al. v. Connor, Starks et al.*, 3 K. 414, 432.

4. In quo warranto defendant is "probably" entitled to jury trial. *The State, ex rel., v. Allen*, 5 K. 213, 220.

5. Municipal court trial without jury when jury obtainable on appeal. *City of Emporia v. Volmer*, 12 K. 622, 631.

6. In action for recovery of money, jury may be demanded. *Board of Education v. Scoville*, 13 K. 17, 33.

7. When trial by jury not a matter of right; correction of assessments. *Ross v. Comm'rs of Crawford Co.*, 16 K. 411.

8. Court may send any issues in equity case to jury. *Hixon v. George*, 18 K. 253, 256.

9. Duty of courts to enforce rigid observance of statutes. *The State v. Snyder*, 20 K. 306.

10. Jury trial not matter of right in action for divorce. *Carpenter v. Carpenter*, 30 K. 712, 718, 2 P. 122.

11. Where no jury in first instance, right on appeal inviolate. In re *Rols, Petitioner*, 30 K. 758, 761, 1 P. 523.

12. Power of legislature limited by provisions of bill of rights. *Atchison Street Rly. Co. v. Mo. Pac. Rly. Co.*, 31 K. 660, 665, 3 P. 284.

13. Not entitled to jury in "proceedings in aid of execution." In re *Burrows, Petitioner*, 33 K. 675, 677, 680, 7 P. 148.

14. Not entitled to trial by jury for violating city ordinance. *The State, ex rel., v. City of Topeka*, 36 K. 76, 85, 86, 12 P. 310.

15. Jury not necessary in proceedings to annex land to city. *Callon v. Junction City*, 43 K. 627, 629, 23 P. 652. Criticized: *Town of Fairbanks v. Barrack*, 282 F. 420.

16. Not entitled to jury for violation of injunction. *The State, ex rel., v. Durein*, 46 K. 695, 697, 27 P. 148.

17. Appeal to court with jury, must be without unreasonable restrictions. In re *Jahn, Petitioner*, 55 K. 694, 697, 698, 41 P. 956. Overruled: *City of Fort Scott v. Arbuckle*, 165 K. 374, 196 P.2d 217.

18. Twelve jurors necessary in trial on felony charge. *The State v. Simons*, 61 K. 752, 754, 60 P. 1052.

19. Jury not guaranteed in proceedings to establish boundary lines. *Swarz v. Ramala*, 63 K. 633, 636, 66 P. 649.

20. Trial in police court without jury does not violate section. In re *Kinsel*, 64 K. 1, 3, 67 P. 634. Overruled: *City of Fort Scott v. Arbuckle*, 165 K. 374, 196 P.2d 217.

21. Declaring places common nuisances where intoxicating liquor sold, etc., valid. *The State v. McManus*, 65 K. 720, 722, 70 P. 700.

22. Jury not demandable as matter of right in quo warranto. *Wheeler v. Caldwell*, 68 K. 776, 778, 75 P. 1031.

23. Right to jury of twelve may be waived in misdemeanors. *The State v. Wells*, 69 K. 792, 793, 77 P. 547.

24. Not entitled to jury in injunction under prohibitory liquor law. *Cowdery v. The State*, 71 K. 450, 80 P. 953.

25. Cities may destroy intoxicating liquor and property used in selling. *Stahl v. Lee*, 71 K. 511, 519, 80 P. 983.

26. Dispute regarding boundary; no jury as matter of right. *Mathis v. Strunk*, 73 K. 595, 597, 85 P. 590.

27. Plea in abatement; age of defendant; defendant entitled to jury. *The State v. Dunn*, 75 K. 799, 802, 90 P. 231.

28. Suit to cancel lease, equitable; not entitled to jury. *Mills v. Hartz*, 77 K. 218, 223, 94 P. 142.

29. Not entitled to jury on trial for indirect contempt. *The State v. Johnston*, 78 K. 615, 618, 97 P. 790.

30. Jury to try title to land and possession of real estate. *Atkinson v. Crowe*, 80 K. 161, 163, 102 P. 50, 106 P. 1052.

31. In partition, jury to try ownership and right of possession. *Gordon v. Munn*, 83 K. 242, 244, 111 P. 177.

32. Section not violated by jury of four in lunacy inquest. *The State v. Linderholm*, 84 K. 603, 114 P. 857.

33. Act providing for charging of expenses by entomological commission, valid. *Balch v. Glenn*, 85 K. 735, 739, 119 P. 67.

34. Acquittal on ground of insanity; commitment; right of jury. In re *Clark*, 86 K. 539, 540, 121 P. 492.

35. Execution against person; no jury demandable as matter of right. *Tatlow v. Bacon*, 101 K. 26, 30, 165 P. 835.

36. Action to set aside will; not entitled to jury. *Cole v. Drum*, 109 K. 148, 153, 197 P. 1105.

37. Vagrancy; waiver of right to trial by jury. In re *Clancy, Petitioner*, 112 K. 247, 249, 210 P. 487.

38. Section only applies to cases that were triable by jury before constitution adopted. *State v. Lee*, 113 K. 462, 215 P. 299.

39. No right to trial by jury in suit for accounting among stockholders. *Spena v. Goffe*, 119 K. 831, 241 P. 257.

40. Presumption that officers knew of insolvency of bank does not contravene section. *Ramsey Petroleum Co. v. Adams*, 119 K. 844, 241 P. 433.

41. Denial of jury trial nonprejudicial where complaining party's testimony establishes fact. *Wheat Growers Ass'n v. Goering*, 123 K. 508, 256 P. 119.

42. Substance of pleadings determines character of action. *Estey v. Holdren*, 126 K. 385, 387, 267 P. 1098.

43. Right to jury trial is to be determined by pleadings rather than evidence. *Cresty v. Briggs*, 127 K. 151, 272 P. 178.

44. Discharge of jury for inability to agree held not jeopardy. *State v. Tucker*, 137 K. 84, 89, 19 P.2d 436.

even (slightly) judicially jeopardized by the Second Amendment was the federal Gun-Free School Zones Act of 1990.⁸ In declaring the law outside the scope of the Congressional power over interstate commerce,⁹ the Fifth Circuit suggested in passing that the law might also be problematic on Second Amendment grounds.¹⁰ The Supreme Court, affirming the Commerce Clause holding, did not mention the Second Amendment.¹¹

The story of the right to keep and bear arms under state constitutions is just the opposite. From the 1820s until the present, courts have used state constitutional rights to arms to strike down various gun control laws. Altogether, twenty weapons laws have been declared void as a result of a state right to keep and bear arms.¹² Forty-three state constitutions contain some kind of right to bear arms provision, making the right to arms among the more ubiquitous civil liberties guaranteed by state constitutions.¹³

8. Pub. L. No. 101-647, 104 Stat. 4844 (codified at 18 U.S.C. §§ 921-924 (Supp. V 1993)).

9. *United States v. Lopez*, 2 F.3d 1342, 1367-68 (5th Cir. 1993), *aff'd*, 115 S. Ct. 1624 (1995).

10. *Id.* at 1364 n.46.

11. *United States v. Lopez*, 115 S. Ct. 1624 (1995).

12. See *Wilson v. State*, 33 Ark. 557, 558 (1878) (pistol carrying statute); *City of Lakewood v. Pillow*, 501 P.2d 744, 745 (Colo. 1972) (restriction on sale, possession, and carrying); *People v. Nakamura*, 62 P.2d 246, 247 (Colo. 1936) (ordinance prohibiting possession by aliens of a firearm for hunting); *In re Brickey*, 70 P. 609, 609 (Idaho 1902) (gun carrying statute); *Junction City v. Mevis*, 601 P.2d 1145, 1152 (Kan. 1979) (gun carrying ordinance as too broad); *Bliss v. Commonwealth*, 12 Ky. (2 Litt.) 90 (Ct. App. 1822) (concealed carrying statute; state constitution was later amended to allow regulation of concealed carrying of arms); *People v. Zerillo*, 189 N.W. 927, 928 (Mich. 1922) (ordinance prohibiting alien's possession of firearm); *City of Las Vegas v. Moberg*, 485 P.2d 737, 738 (N.M. Ct. App. 1971) (gun carrying ordinance); *State v. Kerner*, 107 S.E. 222, 224 (N.C. 1921) (ordinance requiring license to carry pistol); *In re Reilly*, 31 Ohio Dec. 364, 365 (C.P. 1919) (ordinance forbidding hiring armed guard to protect property); *State v. Delgado*, 692 P.2d 610, 610 (Or. 1984) (ordinance prohibiting possession of switchblade knife); *State v. Blocker*, 630 P.2d 824, 824 (Or. 1981) (prohibition of carrying a club); *State v. Kessler*, 614 P.2d 94, 95 (Or. 1980) (prohibition of possession of a club); *Barnett v. State*, 695 P.2d 991, 991 (Or. Ct. App. 1985) (ordinance prohibiting possession of black-jack); *Glasscock v. City of Chattanooga*, 11 S.W.2d 678, 678 (Tenn. 1928) (gun carrying ordinance); *Andrews v. State*, 50 Tenn. (3 Heisk.) 165, 168 (1871) (pistol carrying statute); *Smith v. Ishenhour*, 43 Tenn. (3 Cold.) 214, 215 (1866) (gun confiscation law); *Jennings v. State*, 5 Tex. Crim. App. 298 (Ct. App. 1878) (ordinance requiring forfeiture of pistol after misdemeanor conviction); *State v. Rosenthal*, 55 A. 610, 611 (Vt. 1903) (pistol carrying ordinance as too restrictive); *State ex rel. City of Princeton v. Buckner*, 377 S.E.2d 139, 149 (W. Va. 1988) (gun carrying law as too restrictive).

13. Alabama: "That every citizen has a right to bear arms in defense of himself and the state." ALA. CONST. art. I, § 26.

Alaska: "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 infringed." ALASKA CONST. art. 1, § 19.

Arizona: "The right of the individual citizen to bear arms in defense of himself or the State shall not be impaired, but nothing in this section shall be construed as authorizing individuals or corporations to organize, maintain, or employ an armed body of men." ARIZ. CONST. art. II, § 26.

Arkansas: "The citizens of this State shall have the right to keep and bear arms for their common defense." ARK. CONST. art. II, § 5.

Colorado: "The right of no person to keep and bear arms in defense of his home, person and property, or in aid of the civil power when thereto legally summoned, shall be called in question;

but nothing herein contained shall be construed to justify the practice of carrying concealed weapons." COLO. CONST. art. II, § 13.

Connecticut: "Every citizen has a right to bear arms in defense of himself and the state." CONN. CONST. art. I, § 15.

Delaware: "A person has the right to keep and bear arms for the defense of self, family, home and state, and for hunting and recreational use." DEL. CONST. art. I, § 20.

Florida: "The right of the people to keep and bear arms in defense of themselves and of the lawful authority of the state shall not be infringed, except that the manner of bearing arms may be regulated by law." FLA. CONST. art. I, § 8(a).

Georgia: "The right of the people to keep and bear arms shall not be infringed, but the General Assembly shall have power to prescribe the manner in which arms may be borne." GA. CONST. art. I, § 1, ¶ 8.

Hawaii: "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 infringed." HAW. CONST. art. I, § 17.

Idaho: "The people have the right to keep and bear arms, which right shall not be abridged; but this provision shall not prevent the passage of laws to govern the carrying of weapons concealed on the person nor prevent the passage of any legislation providing penalties for the possession of firearms by a convicted felon, nor prevent the passage of any legislation punishing the use of a firearm. No law shall impose licensure, registration or special taxation on the ownership or possession of firearms or ammunition. Nor shall any law permit the confiscation of firearms, except those actually used in the commission of a felony." IDAHO CONST. art. I, § 11.

Illinois: "Subject only to the police power, the right of the individual citizen to keep and bear arms shall not be infringed." ILL. CONST. art. I, § 22.

Indiana: "The people shall have a right to bear arms, for the defense of themselves and the State." IND. CONST. art. I, § 32.

* Kansas: "The people have the right to bear arms for their defense and security; but standing armies, in time of peace, are dangerous to liberty, and shall not be tolerated, and the military shall be in strict subordination to the civil power." KAN. CONST. BILL OF RIGHTS, § 4.

Kentucky: "All men are, by nature, free and equal, and have certain inherent and inalienable rights, among which may be reckoned: . . . Seventh: The right to bear arms in defense of themselves and of the State, subject to the power of the General Assembly to enact laws to prevent persons from carrying concealed weapons." KY. CONST. BILL OF RIGHTS § 1, ¶ 7.

Louisiana: "The right of each citizen to keep and bear arms shall not be abridged, but this provision shall not prevent the passage of laws to prohibit the carrying of weapons concealed on the person." LA. CONST. art. I, § 11.

Maine: "Every citizen has a right to keep and bear arms; and this right shall never be questioned." ME. CONST. art. I, § 16.

Massachusetts: "The people have a right to keep and to bear arms for the common defense. And as, in times of peace, armies are dangerous to liberty, they ought not to be maintained without the consent of the Legislature; and the military power shall always be held in an exact subordination to the Civil authority, and be governed by it." MASS. CONST. Part the First, art. xvii.

Michigan: "Every person has a right to keep and bear arms for the defense of himself and the state." MICH. CONST. art. I, § 6.

Mississippi: "The right of every citizen to keep and bear arms in defense of his home, person, or property, or in aid of the civil power when thereto legally summoned, shall not be called in question, but the legislature may regulate or forbid carrying concealed weapons." MISS. CONST. art. III, § 12.

Missouri: "That the right of every citizen to keep and bear arms in defense of his home, person and property, or when lawfully summoned in aid of the civil power, shall not be questioned; but this shall not justify the wearing of concealed weapons." MO. CONST. art. I, § 23.

Montana: "The right of any person to keep or bear arms in defense of his own home, person, and property, or in aid of the civil power when thereto legally summoned, shall not be called

in question, but nothing herein contained shall be held to permit the carrying of concealed weapons." MONT. CONST. art. II, § 12.

Nebraska: "All persons are by nature free and independent, and have certain inherent and unalienable rights; among these are life, liberty, and the pursuit of happiness and the right to keep and bear arms for security or defense of self, family, home, and others, and for lawful common defense, hunting, recreational use, and all other lawful purposes, and such rights shall not be denied or infringed by the state or any subdivision thereof." NEB. CONST. art. I, § 1.

Nevada: "Every citizen has the right to keep and bear arms for security and defense, for lawful hunting and recreational use and for other lawful purposes." NEV. CONST. art. I, § 11(1).

New Hampshire: "All persons have the right to keep and bear arms in defense of themselves, their families, their property and the state." N.H. CONST. Part First, art. 2-a.

New Mexico: "No law shall abridge the right of the citizen to keep and bear arms for security and defense, for lawful hunting and recreational use and for other lawful purposes, but nothing herein shall be held to permit the carrying of concealed weapons." N.M. CONST. art. II, § 6.

North Carolina: "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 infringed; and, as standing armies in time of peace are dangerous to liberty, they shall not be maintained, and the military shall be kept under strict subordination to, and governed by, the civil power. Nothing herein shall justify the practice of carrying concealed weapons, or prevent the General Assembly from enacting penal statutes against that practice." N.C. CONST. art. I, § 30.

North Dakota: "All individuals are by nature equally free and independent and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing and protecting property and reputation; pursuing and obtaining safety and happiness; and to keep and bear arms for the defense of their person, family, property, and for lawful hunting, recreational, and other lawful purposes, which shall not be infringed." N.D. CONST. art. I, § 1.

Ohio: "The people have the right to bear arms for their defense and security; but standing armies, in time of peace, are dangerous to liberty, and shall not be kept up; and the military shall be in strict subordination to the civil power." OHIO CONST. art. I, § 4.

Oklahoma: "The right of a citizen to keep and bear arms in defense of his home, person, or property, or in aid of the civil power, when thereunto legally summoned, shall never be prohibited; but nothing herein contained shall prevent the Legislature from regulating the carrying of weapons." OKLA. CONST. art. II, § 26.

Oregon: "The people shall have the right to bear arms for the defence of themselves, and the State, but the Military shall be kept in strict subordination to the civil power." OR. CONST. art. I, § 27.

Pennsylvania: "The right of the citizens to bear arms in defense of themselves and the State shall not be questioned." PA. CONST. art. I, § 21.

Rhode Island: "The right of the people to keep and bear arms shall not be infringed." R.I. CONST. art. I, § 22.

South Carolina: "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 infringed. As, in time of peace, armies are dangerous to liberty, they shall not be maintained without the consent of the General Assembly. The military power of the State shall always be held in subordination to the civil authority and be governed by it." S.C. CONST. art. I, § 20.

South Dakota: "The right of the citizens to bear arms in defense of themselves and the state shall not be denied." S.D. CONST. art. VI, § 24.

Tennessee: "That the citizens of this State have a right to keep and bear arms for their common defense; but the Legislature shall have power, by law, to regulate the wearing of arms with a view to prevent crime." TENN. CONST. art. I, § 26.

Texas: "Every citizen shall have the right to keep and bear arms in the lawful defense of himself or the State; but the Legislature shall have power, by law, to regulate the wearing of arms, with a view to prevent crime." TEX. CONST. art. I, § 23.

Yet popular debate over gun control, which focuses intensely on the federal Second Amendment, largely neglects state constitutional provisions, provisions which are usually far more relevant to proposed state and local gun controls than the Second Amendment. Compared to the Second Amendment, legal scholarship has paid relatively little attention to state constitutional arms provisions.¹⁴

Utah: "The individual right of the people to keep and bear arms for security and defense of self, family, others, property, or the state, as well as for other lawful purposes shall not be infringed; but nothing herein shall prevent the Legislature from defining the lawful use of arms." UTAH CONST. art. I, § 6.

Vermont: "That the people have a right to bear arms for the defence of themselves and the State—and as standing armies in time of peace are dangerous to liberty, they ought not to be kept up; and that the military should be kept under strict subordination to and governed by the civil power." VT. CONST. ch. I, art. 16.

Virginia: "That a well regulated militia, composed of the body of the people, trained to arms, is the proper, natural, and safe defense of a free state, therefore, the right of the people to keep and bear arms shall not be infringed; that standing armies, in time of peace, should be avoided as dangerous to liberty; and that in all cases the military should be under strict subordination to, and governed by, the civil power." VA. CONST. art. I, § 13.

Washington: "The right of the individual citizen to bear arms in defense of himself, or the state, shall not be impaired, but nothing in this section shall be construed as authorizing individuals or corporations to organize, maintain or employ an armed body of men." WASH. CONST. art. I, § 24.

West Virginia: "A person has the right to keep and bear arms for the defense of self, family, home and state, and for lawful hunting and recreational use." W. VA. CONST. art. III, § 22.

Wyoming: "The right of citizens to bear arms in defense of themselves and of the state shall not be denied." WYO. CONST. art. I, § 24.

14. The fact that only two books have been written on the subject of state constitutional rights to arms indicates the relative dearth of scholarship on the subject. CLAYTON E. CRAMER, *FOR THE DEFENSE OF THEMSELVES AND THE STATE: THE ORIGINAL INTENT AND JUDICIAL INTERPRETATION OF THE RIGHT TO KEEP AND BEAR ARMS* (1994) (discussing right to bear arms as construed by state and federal courts); STEPHEN HALBROOK, *A RIGHT TO BEAR ARMS: STATE AND FEDERAL BILLS OF RIGHTS AND CONSTITUTIONAL GUARANTEES* (1989) (tracing evolution of individual right to bear arms and loss of framers' original intent in judicial interpretation). For law review articles, see Caplan, *supra* note 2, at 789 (discussing 1981 decisions on carrying of arms in Indiana and Oregon); Robert Dowlut, *Federal and State Constitutional Guarantees to Arms*, 15 U. DAYTON L. REV. 59 (1989) (analyzing development of right to bear arms at federal and state level); Dowlut, *supra* note 2, *passim*; Robert Dowlut & Janet Knoop, *State Constitutions and the Right To Bear Arms*, 7 OKLA. CITY U. L. REV. 177 (1982) (comparative analysis of state constitutional provisions concerning right to bear arms); Stephen Halbrook, *Second Class Citizenship and the Second Amendment in the District of Columbia*, 5 GEO. MASON U. CIV. RTS. L.J. (forthcoming 1995); Stephen Halbrook, *Rationing Firearms Purchases and the Right To Keep Arms: Reflections on the Bills of Rights of Virginia, West Virginia, and the United States*, 96 W. VA. L. REV. 1, 3 (1993) (comparative analysis of right to bear arms provisions from two state constitutions and state gun control legislation); Stephen Halbrook, *The Right To Bear Arms in Texas: the Intent of the Framers of the Bills of Rights*, 41 BAYLOR L. REV. 629 (1989) (comparative analysis of Second Amendment with right to bear arms in Texas Constitution); Stephen Halbrook, *The Right To Bear Arms in the First State Bills of Rights: Pennsylvania, North Carolina, Vermont, and Massachusetts*, 10 VT. L. REV. 255 (1985) (comparing states' Bills of Rights and rights to bear arms); Reynolds, *supra* note 2 (discussing Second Amendment in relation to Tennessee constitution).



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Region VI
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February, 1997

TESTIMONY IN OPPOSITION TO PROPOSED CONCEALED WEAPONS AND PREEMPTION LAWS

Violence, particularly that committed with firearms, is epidemic in this country. Further, this violence is not always accompanied by what we traditionally view as criminal intent to commit murder, robbery, and the like. For whatever reason, people in general are angry - at government, at their employers, at their families, at other motorists, at strangers - and this anger is often accompanied by violence. Making firearms more readily available will not make the problem go away; in fact, it seems ludicrous to assert that arming more people will reduce the incidence of violence.

Effect in Reducing Crime

In my opinion, the theory behind concealed weapons laws is flawed. The assumption that armed citizens will be able to stem the tide of crime is spurious, at best. Proponents offer the argument that crime has been reduced in states with concealed weapons laws. Is there a cause and effect? This is far from proven. Violent crime numbers are down all over the country, in states with and without concealed carry laws. Reputable researchers and institutions dispute methodologies and findings of the most widely cited study. The number of homicides in Kansas City, Missouri dropped significantly between 1994 and 1995, but citizens there have no right to carry concealed weapons.

Crime is a social phenomenon, and crime statistics fluctuate widely from year to year. To my knowledge, no one factor has ever been identified to cause such variations. It could just as easily be argued that the widespread implementation of the community policing philosophy or tightening of domestic violence laws has been responsible for the often-quoted reduction of violent crime in Florida.

Sen. Federal & State Affairs Comm
Date: 2-11-97
Attachment: # 5

Background Checks/Licensing

All concealed weapons laws are predicated on background checks which will weed out those unsuitable to be issued permits. This assumption is erroneous, as it assumes anyone without a known record of certain disqualifiers (felony convictions, mental illness, drug abuse, etc.) is suitable for a carry permit. Much of this information is not documented in police or any other public records; for example, mental illness is treated as a medical condition, and medical records are generally not subject to disclosure. Drug and alcohol abuse may never come to police attention in the form of arrests. Violent criminals may have no felony convictions due to plea bargaining. Arrest and conviction records are not centralized in Kansas, making searches time-consuming and haphazard at best. I have serious doubts whether the in-depth investigation demanded by this legislation can be accomplished within the time and funding allotted.

Training in the Use of Firearms

Proper firearm use is a function of three different elements: accuracy, reaction, and judgment. Most people can be taught to shoot accurately, but conditions on a range do not equate to those encountered in the stress of an armed confrontation. Average reaction will also suffice in most situations, but reaction is adversely affected by fatigue, medication, alcohol, and any number of other factors. The most critical component, however, is that of judgment. Is this a situation in which the use of deadly force is appropriate? Is it safe to shoot? Do I have a clear field of fire? Judgment is also clouded by anger, stress, fatigue, medication, and chemicals.

Law enforcement officers train regularly with their weapons, in general at least four times per year. Failure to qualify results in the loss of the officer's commission until such time as he or she can demonstrate the required level of skill. However, this "hands on" training is insufficient; it must be continually supplemented through policy, training, supervision, and updated legal information. Constant reinforcement of knowledge, skill, and judgment is the only means law enforcement administrators have to insure officers react properly when faced with a potential deadly force situation. Are we certain the average citizen has the time, resources, or even concern to insure that he or she keeps current with all of these vital factors?

Shooting is not a simple physical exercise; merely being able to fire a weapon and handle it safely is not sufficient.

Legal Considerations

It has been my observation throughout my 25-year law enforcement career that the average citizen believes that he or she has much more latitude to use deadly force than the law truly allows. How many times have we heard the "folklore" that if you shoot an intruder outside your home you should drag the body inside, because it's okay to kill someone in your house? Such a belief is nonsense; the law in Kansas doesn't condone killing a person simply because he has entered your house. It also assumes that the police are so inept we'll never be able to figure out what really happened. So what is the law? When can you use force? How much force can you use?

How many average citizens can discuss Tennessee vs. Garner? If they want to carry weapons they ought to be familiar with this case. Does Kansas law give a citizen more authority to use deadly force than it gives the police? People need to understand the restrictions. I will never forget the sight of a resident holding three pre-teens at the point of a high-powered rifle because they had broken a single pane of glass out of his gas yard lamp. Vandalism is not a capital offense, and the "protection" of \$5 worth of glass does not justify even the threat of deadly force.

Are citizens aware of the civil liability implications of using or misusing deadly force? Most police agencies are somewhat shielded because of constant reinforcement through training and policy. Agencies still get sued, and when they make mistakes they pay dearly, but prevention is the key to protection. What kind of legal and financial liability will licensees and instructors incur?

The law relating to the use of deadly force is very specific, yet it is subject to interpretation and as such, it is regularly modified by the courts. There are vast differences between criminal and civil sanctions for improperly using deadly force, and anyone who wants to carry a weapon should be fully versed in all the legal considerations. I question whether the training envisioned will be adequate in its content and frequency to meet legal requirements, and many people who arm themselves may find out in court that their training failed them.

Aggressive Driving

Motorists are unquestionably becoming more aggressive. Have you ever experienced the anger of other drivers who were speeding, tailgating, changing lanes without warning or signals, and otherwise frustrated with their inability to get wherever they were going in the biggest possible hurry and found you and everyone else on the road an obstacle? Did you ever make a simple mistake in judgment and start to pull out in front of someone when there was not enough room to do so safely? Did the offended driver lay on the horn, flash rude gestures, scream at you? This lack of courtesy and civility has dangerous consequences because emotion impairs judgment. NHTSA, the National Highway Traffic Safety Administration, has labeled aggressive driving a serious traffic hazard in the same manner as impaired driving; the American Automobile Association has said that traffic deaths directly attributable to aggressive driving have increased by more than 50 percent in the last five years.

I ask you to consider the consequences of adding the ready availability of firearms to this situation. Will the next offended driver take out his anger at your simple mistake by shooting at you instead of flipping you the bird? Some will, without question, do just that. Unfortunately, it happens all the time. One such shooting and one threat by brandishing a gun were reported in Johnson County in just the last week.

Personal Considerations

I doubt that many people have any concept of the personal ramifications of using deadly force. It's very easy to say we could "blow someone away" if it was warranted; it's another matter altogether to deal with the consequences of such an action. Recognize it or not, we are products of a society with an ethical and moral code which teaches us "thou shalt not kill." Even police officers who correctly and justifiably use deadly force can suffer feelings of guilt and remorse, and they sometimes require psychological assistance to deal with these feelings.

As an alternative to concealed firearms, why not allow or even encourage people concerned about self-defense to carry pepper mace? It is easy to carry, requires little or no special training, can be more immediately disabling than a gunshot wound, demands no more critical accuracy than a firearm, and carries few or none of the deadly force implications.

Public Policy Considerations

Although the issue of carrying concealed weapons is frequently presented as an idea with widespread public support, that position is not necessarily fact. Three studies with which I am familiar paint a much different picture.

In both Michigan and Illinois, statistically valid random polls showed that the public was not in favor of concealed weapons laws. The Illinois study demonstrated that nearly 75% of the population believed that such a law was not desirable. Interestingly, even owners of handguns generally disfavored the idea. Information on these studies is attached.

A Kansas State University poll last year showed very much the same results here. It should also be noted that Kansas and Illinois are similar in many respects - a few widely scattered urban areas with a predominantly rural, agricultural base in the majority of the state.

If a concealed weapons law is to be considered, it seems appropriate for the voters of the state to tell us that they favor such a law before one is adopted. If the citizens of Kansas clearly favor this legislation, law enforcement will live with the results. The only argument I've ever heard against a public vote is that we shouldn't have to vote in order to exercise a basic constitutional right. I would counter that no constitutional right is without restrictions - even freedom of speech has limits and boundaries.

Another public policy consideration involved in this type of legislation is that of preemption. I feel very strongly that preemption of local regulation is unwise and counter to the public interest. Kansas law recognizes the diversity of the state in granting many home rule powers to local communities. What works in rural southwestern Kansas does not automatically fit in Johnson County and vice versa simply because both locales are in the same state. Local authorities should have the right to control the carrying and use of weapons in a manner appropriate to local needs, conditions, and traditions. Motorists are faced with inconsistencies in traffic laws when

traveling from city to city and state to state. Persons carrying weapons should also reasonably expect local differences.

Finally, it should be noted that the League of Kansas Municipalities, the Kansas Association of Chiefs of Police, the Kansas Sheriffs Association, the Kansas Peace Officers Association, and the Kansas County and District Attorneys Association all oppose both concealed carry and preemption laws.

Officer Safety

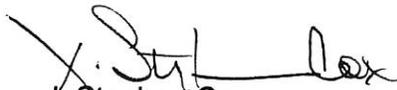
Last, but far from least, is the matter of officer safety. Law enforcement officers face enough risk coping with armed criminals; armed citizens, even with good intentions, pose additional hazards. Confrontations with criminals are rarely controlled and orderly. As a rule they are stressful and often chaotic. The addition of another distraction - an armed citizen - simply increases the risks for all involved. Who is this person running up carrying a gun? Is he another suspect, or is he a citizen trying to help? How can I tell? How much attention can I pay to him, drawing my focus away from the criminal? How is he going to react? Will he open fire in a crowded place in an effort to help?

Officers often have to deal with armed, terrified people who believe someone is trying to break into their homes. The officer in such a situation is much more at risk than any possible perpetrator. We find armed motorists who, right or wrong, feel threatened and are so paranoid that they may react violently to anything out of the ordinary such as a police officer in an unmarked car who stops them for a traffic violation.

I urge you to defeat this legislation, or to at least require that the issue of concealed weapons and preemption be placed before all the voters of Kansas so that you may see for yourselves whether these are truly matters of widespread public support. I believe you owe that much to all your constituents.

Thank you for your consideration.

Sincerely,


J. Stephen Cox
Chief of Police
Leawood, Kansas

Legislative Committee Chair
Kansas Association of Chiefs of Police

Illinois Statewide Survey on Public Attitudes toward Concealed Handguns

April 13, 1995

conducted by

The Illinois State Police
and
the Survey Research Office,
Institute for Public Affairs,
Sangamon State University

The Illinois Statewide Survey on Public Attitudes toward Concealed Handguns was conducted through telephone interviews with 1,403 randomly-selected citizens. Interviewing took place from April 8 through April 12, 1995.

Presented below are the survey sample numbers and sampling errors for selected groups, at the 95 percent confidence level. That is, 95 times out of 100, the actual population percentages will be within the error range of the percentage results in the survey.

<i>Population group</i>	<i>Number</i>	<i>Error</i>
Statewide	1,403	+/- 2.6%
Statewide males.....	563	+/- 4.1%
Statewide females	839	+/- 3.4%
Cook County	445	+/- 4.7%
Other counties in Chicago metro area	399	+/- 4.9%
Counties outside the Chicago metro area	558	+/- 4.2%
Households not owning handgun	1,061	+/- 3.0%
Households owning handguns.....	249	+/- 6.2%
Cook County		
Males	174	+/- 7.4%
Females	270	+/- 6.0%
Other counties in Chicago metro area		
Males	175	+/- 7.4%
Females	224	+/- 6.6%
Counties outside the Chicago metro area		
Males	213	+/- 6.7%
Females	345	+/- 5.3%

Results have been adjusted so that the survey sample is representative of the public in terms of the three regions and in terms of gender.

Summary of Findings

Whether citizens should be allowed to carry concealed handguns. Nearly three-quarters (74%) of the statewide public believe that citizens should NOT be allowed to carry concealed handguns. This belief is held by vast majorities in every regional and gender group. Over 80 percent of females in the Chicago metropolitan area believe this. Half of the respondents in households which own a handgun also hold this belief.

Whether would feel more safe or less safe if citizens could carry concealed handguns. By a three-to-one margin, more statewide respondents feel they would be LESS SAFE rather than MORE SAFE if citizens could carry concealed handguns. For the question which asked about carrying concealed handguns *in cars and while walking around outside*, 65 percent said they would feel less safe while 22 percent said they would feel more safe. For the question which asked about carrying concealed handguns *into public places -- like stores and restaurants*, 62 percent said they would feel less safe while 18 percent said they would feel more safe.

Females in the Chicago suburbs outside of Cook County are particularly likely to believe that they would feel less safe rather than more safe (79% vs. 10% for the car/walking around question and 77% vs. 12% for the public places question). Nearly half of the respondents in households with a handgun said they would feel less safe rather than more safe for both questions.

Consequences for crime. By a margin of nearly three-to-one, more of the statewide public believe that crime will increase rather than decrease if citizens are allowed to carry concealed handguns (46% vs. 16%). About 30 percent think it will make no difference.

At least half of the following groups believe that crime will increase: females (53%), those in households without handguns (53%), and Cook County residents (50%). Nearly one-quarter (24%) of males believe that crime will decrease, but even more of them believe crime will increase (38%) and believe crime will remain the same (32%). Those respondents in households with a handgun are divided, with 36 percent believing crime will decrease, 52 percent believing there will be no difference in crime, and 29 percent believing there will be an increase in crime.

Consequences for accidental shootings. Just over 70 percent of the statewide public believe that accidental shootings will increase if citizens are allowed to carry concealed handguns. This belief is held by two-thirds to three-quarters of both males and females and by the public in each of the three regions. It is also held by nearly 60 percent of the respondents in households with a handgun. One-in-six (17%) believe that there will be no difference while one-in-twenty (6%) believe that there will be a decrease in accidental shootings.

Attitudes toward two selected requirements if Illinois allows citizens to carry concealed handguns. If Illinois allows citizens to carry concealed handguns, over 70 percent of the statewide public believe citizens should be required to show that they have a real need for protection before they are allowed to carry one. This belief is held by vast majorities of every regional and gender group as well as by 60 percent of the respondents in households with a handgun.

If Illinois allows concealed handguns, over 80 percent of the statewide public believe that citizens who carry concealed handguns should be required to have liability insurance. This finding holds for both males and females, for each of the three regions, and for those in households with and without handguns.

Statistical Summary of Results

Question 1: Do you think citizens should be allowed to carry concealed handguns?

	Yes	No	Neither/ DK/NA*
Statewide Results	19.2%	73.8%	7.0%
Results by Gender: Male	26.2%	67.8%	6.0%
Female	12.8%	79.5%	7.7%
Results by Region**:			
Cook County	14.9%	77.1%	8.0%
Rest of Chicago Metro Area	21.2%	73.7%	5.1%
Rest of State.....	23.3%	70.1%	6.6%
Results by Household Handgun Ownership:			
Do Not Own Handgun	13.4%	82.3%	4.4%
Own Handgun	45.3%	50.9%	3.8%
For Cook County			
Male	20.1%	71.3%	8.6%
Female	10.4%	82.6%	7.0%
For Rest of Chicago Metro Area (Rest of MSA)			
Male	30.9%	63.4%	5.7%
Female	10.7%	84.8%	4.5%
For Rest of State			
Male	31.0%	66.7%	2.3%
Female	16.8%	73.0%	10.1%

*In this table and others, "DK" refers to those who said they did not know, and "NA" refers to those who did not give a response to the question. "Neither" in the tables refers to those who would not give a "yes" or "no" response or who not choose between the responses given.

**Counties outside of Cook County in the Chicago metropolitan area (in the Chicago MSA) were defined in this project as: Lake, DuPage, Kane, McHenry, Will, Kendall, Grundy, and DeKalb.

Question 2: Which of the following two statements comes closer to your view ...

One: I would feel safer if I could carry a concealed handgun in my car and while walking around outside.

or

Two: I would feel less safe if I knew other citizens could carry concealed handguns in their cars and while walking around outside.

Concealed handguns in cars and while walking around outside

	<i>One: Feel safer if I could carry concealed handgun</i>	<i>Two: Feel less safe if others could carry concealed handgun</i>	<i>Neither DK/ NA</i>
Statewide Results	22.4%	64.8%	12.9%
Results by Gender: Male	29.5%	57.8%	12.7%
Female	15.7%	71.2%	13.0%
Results by Region: Cook County	20.0%	64.2%	15.8%
Rest of Chicago MSA	20.4%	70.3%	9.3%
Rest of State	26.5%	62.5%	11.0%
Results by Household Handgun Ownership:			
Do Not Own Handgun	17.0%	72.5%	10.5%
Own Handgun	45.7%	47.6%	6.7%
For Cook County			
Male	24.1%	59.2%	16.7%
Female	15.9%	68.9%	15.2%
For Rest of Chicago Metro Area (Rest of MSA)			
Male	29.7%	62.3%	8.0%
Female	10.3%	79.0%	10.7%
For Rest of State			
Male	36.2%	53.5%	10.3%
Female	18.3%	70.1%	11.6%

Question 3: Which of the following two statements comes closer to your view ...

One: I would feel less safe if I knew other citizens could carry concealed handguns into public places -- like stores and restaurants.

or

One: I would feel safer if I could carry a concealed handgun into public places -- like stores and restaurants.

Concealed handguns into public places -- like stores and restaurants

	<i>Two: Feel safer if I could carry concealed handgun</i>	<i>One: Feel less safe if others could carry concealed handgun</i>	<i>Neither DK/ NA</i>
Statewide Results	18.2%	62.0%	19.8%
Results by Gender: Male	25.1%	57.1%	17.8%
Female	11.9%	66.4%	21.7%
Results by Region: Cook County	16.3%	59.6%	24.1%
Rest of Chicago MSA	18.3%	69.0%	12.7%
Rest of State.....	20.5%	61.0%	18.6%
Results by Household Handgun Ownership:			
Do Not Own Handgun	14.5%	68.9%	16.6%
Own Handgun	36.4%	49.0%	14.6%
For Cook County			
Male	23.0%	55.2%	21.8%
Female	10.4%	63.3%	26.3%
For Rest of Chicago Metro Area (Rest of MSA)			
Male	24.6%	61.7%	13.7%
Female	11.6%	76.8%	11.6%
For Rest of State			
Male	28.2%	56.3%	15.5%
Female	13.9%	64.9%	21.2%

Question 4: Do you think allowing citizens to carry concealed handguns will cause crime to decrease, increase, or not make much difference either way?

	Decrease	Increase	No Difference	DK/NA
Statewide Results	16.4%	45.8%	30.2%	7.5%
Results by Gender: Male	24.0%	37.7%	32.0%	6.4%
Female.....	9.4%	53.2%	28.7%	8.7%
Results by Region: Cook County	15.6%	50.3%	26.8%	7.3%
Rest of Chicago MSA	17.7%	45.6%	29.3%	7.4%
Rest of State	16.6%	40.5%	35.0%	8.0%
Results by Household Handgun Ownership:				
Do Not Own Handgun.....	12.2%	53.2%	31.2%	3.4%
Own Handgun.....	36.4%	28.7%	32.3%	2.6%

Question 5: Do you think that allowing citizens to carry concealed handguns will cause accidental shootings to decrease, increase, or not make much difference either way?

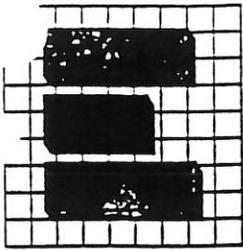
	Decrease	Increase	No Difference	DK/NA
Statewide Results	5.5%	71.3%	17.1%	6.2%
Results by Gender: Male	6.0%	67.1%	21.3%	5.6%
Female.....	4.8%	75.2%	13.2%	6.8%
Results by Region: Cook County	5.2%	74.0%	14.1%	6.7%
Rest of Chicago MSA	4.9%	75.1%	15.1%	4.9%
Rest of State	5.9%	66.0%	21.8%	6.3%
Results by Household Handgun Ownership:				
Do Not Own Handgun.....	5.7%	79.2%	13.8%	1.4%
Own Handgun.....	5.9%	59.3%	32.2%	2.6%

Question 6: If Illinois allows citizens to carry concealed handguns, should citizens be required to show that they have a real need for protection before they are allowed to carry a concealed handgun?

	Yes	No	DK/NA
Statewide Results	72.0%	17.4%	10.6%
Results by Gender: Male	65.9%	24.4%	9.7%
Female	77.6%	11.1%	11.4%
Results by Region: Cook County	72.3%	15.8%	11.9%
Rest of Chicago MSA	69.7%	20.4%	10.0%
Rest of State.....	73.0%	17.7%	9.3%
Results by Household Handgun Ownership:			
Do Not Own Handgun	80.0%	14.2%	5.8%
Own Handgun	60.7%	33.0%	6.4%

Question 7: If Illinois allows citizens to carry concealed handguns, should those citizens who carry these handguns be required to have liability insurance? (PROMPT: that is, insurance to cover any injuries to innocent people they may cause)?

	Yes	No	DK/NA
Statewide Results	82.9%	8.3%	8.8%
Results by Gender: Male	82.0%	10.0%	8.0%
Female	83.6%	6.8%	9.6%
Results by Region: Cook County	82.3%	8.6%	9.1%
Rest of Chicago MSA	84.0%	8.0%	8.1%
Rest of State.....	83.0%	8.1%	9.0%
Results by Household Handgun Ownership:			
Do Not Own Handgun	88.8%	6.8%	4.4%
Own Handgun	81.0%	16.1%	2.9%



EPIC ■ MRA

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Survey Questions about Concealed Weapons and CCW Permits

A STATEWIDE SURVEY
OF VOTER OPINIONS

*EXECUTIVE SUMMARY, ANALYSIS,
AND CROSS TABULATIONS*

conducted for

*The Law Enforcement Coalition for Officer Safety
and Responsible Concealed Weapon Laws*

- Educational
- Political
- Industrial
- Consumer

- Market
- Research
- Analysis

Tuesday, September 12, 1995

D-48

METHODOLOGY

EPIC ■ MRA designed and administered this telephone survey that was conducted by professional interviewers. The survey reached 600 adults, 18 years or older, who are registered to vote in Michigan. The survey was conducted between August 23-28, 1995. Several questions were commissioned by the Law Enforcement Coalition for Officer Safety and Responsible Concealed Weapons Laws to test public opinion on concealed weapons issues and legislation that would ease restrictions on obtaining concealed weapons permits.

If a respondent indicated that he or she had voted in 1992, 1994 or both, or was too young to vote in either, the interview was continued. Respondents for the interviews were selected utilizing an interval method of randomly selected records from a computerized file for Michigan. The sample was geographically stratified so that each county represents in the sample the proportion of expected vote in the 1996 general election for President. The results of these questions are confidential and will not be published or released without the authorization of the Law Enforcement Coalition for Officer Safety and Responsible Concealed Weapons Laws.

In interpreting survey results, all surveys are subject to error; that is the results may differ from those which would have been obtained if the entire population was interviewed. For example, if 50 percent of all 600 respondents expresses support or opposition to a question, as indicated in the chart on the next page, this percentage would have a sampling error of plus or minus 4 percent. That means that with repeated sampling, it is very likely (95 times out of every 100), that the percentage for the entire population would fall between 46.0 percent and 54.0 percent, hence 50 percent \pm 4 percent.

The size of the sampling error depends on the total number of respondents to a particular question. The table which follows on the next page represents the estimated sampling error for different percentage distributions of responses based on sample size.

Statewide Poll - EPIC/MRA - August 23-28, 1995

Frequency Report of Survey Responses - 600 Sample - $\pm 4\%$

20. Do you think citizens in Michigan should be allowed to carry concealed handguns?

24% - Yes.

69% - No.

7% - Undecided/Don't know.

21. Which of the following two statements comes closer to your view?

Statement 1: I would feel safer if I could carry a concealed handgun in my car and while walking around outside.

Statement 2: I would feel less safe if I knew others citizens could carry concealed handguns in their cars and while walking around outside.

21% - Statement 1: I would feel safer carrying a concealed handgun.

71% - Statement 2: I would feel less safe with other citizens carrying a concealed handgun.

8% - Undecided/Don't know.

22. Which of the following two statements comes closer to your view?

Statement 1: I would feel less safe if I knew other citizens could carry concealed handguns into public places - like stores and restaurants.

Statement 2: I would feel safer if I could carry a concealed handgun into public places - like stores and restaurants.

70% - Statement 1: I would feel less safe if other citizens could carry concealed handguns into public places.

19% - Statement 2: I would feel safe if I could carry a concealed handgun into public places.

11% - Undecided/Don't know.

23. Do you think that allowing citizens to carry concealed handguns will cause crime to decrease, increase, or not make much difference either way?

18% - Crime will decrease.

45% - Crime will increase.

32% - Won't make much difference either way.

5% - Undecided/Don't know.

24. Do you think that allowing citizens to carry concealed handguns will cause accidental shootings to decrease, increase, or not make much difference either way?

- 7% - Accidental shootings will decrease.
- 72% - Accidental shootings will increase.
- 20% - Won't make a difference.
- 1% - Undecided/Don't know.

25. If Michigan allows citizens to carry concealed handguns, should citizens be required to show they have a real need for protection before they are allowed to carry a concealed handgun?

- 78% - Yes.
- 16% - No.
- 6% - Undecided/Don't know.

26. If Michigan allows citizens to carry concealed handguns, should those citizens who carry these handguns be required to have liability insurance -- that is, insurance to cover any injuries to innocent people they may cause?

- 81% - Yes.
- 12% - No.
- 7% - Undecided/Don't know.

27. Current Michigan law prohibits citizens from carrying a gun unless they have a legitimate reason to carry one and can obtain a concealed weapons license, called a CCW permit. Proposed legislation under consideration in the Michigan Legislature would change the law to allow any person to get a permit to carry a concealed handgun without having to provide a reason why they need to carry a gun, and a permit would be granted unless the person applying for the permit has a record of mental problems or a criminal record. Based on what you know about this issue, would you approve or disapprove of this proposed legislation? [IF APPROVE/DISAPPROVE] Would that be strongly APPROVE/DISAPPROVE] or somewhat [APPROVE/DISAPPROVE]?

- 13% - Strongly approve.
- 11% - Somewhat approve. 24% TOTAL APPROVE
- 14% - Somewhat disapprove.
- 57% - Strongly disapprove. 71% TOTAL DISAPPROVE
- 5% - Undecided/Don't know.

The Johns Hopkins Center for Gun Policy and Research

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The Claims that Right-to-Carry Laws Reduce Violent Crime are Unsubstantiated

Daniel W. Webster, Sc.D., M.P.H.

Introduction

Many states have recently passed laws making it easier for citizens to obtain permits to carry concealed guns. John R. Lott, Jr. and David B. Mustard recently publicized the results of their study from which they conclude that so-called "shall-issue" laws have been responsible for significant reductions in violent crime.¹ The Johns Hopkins Center for Gun Policy and Research and its affiliated experts have reviewed this study and find its conclusions unsubstantiated. The study's methodology has several important flaws and its conclusions are inadequately supported by the data. Recent studies by researchers at Carnegie Mellon University (Black and Nagin)² and Georgetown University (Ludwig)³ also examine the validity of Lott and Mustard's study. Both of these independent studies confirm that the statistical models used by Lott and Mustard are inappropriate. When these problems are corrected, neither study finds convincing evidence that shall-issue laws reduce violent crime. Some of the most important problems with Lott and Mustard's study are outlined below.

Omitted Variables and Failure to Control for Crime Cycles

Crime rates tend to be cyclical with somewhat predictable declines following several years of increases. These cycles are caused, in part, by factors inadequately accounted for in Lott and Mustard's analyses, such as changes in levels of poverty and adaptations by the criminal justice system to rising crime.^{3,4} Shall-issue laws, as well as a number of other measures intended to reduce crime, tend to be enacted during periods of rising crime. Therefore, the reductions in violent crime which Lott and Mustard

attribute to the implementation of shall-issue laws may be due to the variety of other crime-fighting measures, or to a commonly-observed downward drift in crime levels toward some long-term average.

A reanalysis of Lott and Mustard's data by Dan Black and Daniel Nagin at Carnegie Mellon University clearly demonstrated that: (1) crime rates in states adopting shall-issue laws commonly deviated from national trends during the five years prior to enactment of the laws; and (2) Lott and Mustard did not adequately control for these out-of-the norm crime trends.² Jens Ludwig (Georgetown University) found that shall-issue laws had no significant effect on states' murder rates after controlling for changes in poverty and crime cycles.³

Errors in Lott and Mustard's Statistical Models

Erroneous Assumptions. The results of quasi-experimental studies such as Lott and Mustard's are often dependent upon the appropriateness of the statistical techniques being used. There are several problems with the statistical models used by Lott and Mustard. Their statistical models assumed: (1) an immediate and constant effect of shall-issue laws; and (2) similar law effects across different states and counties. Black and Nagin's reanalysis of Lott and Mustard's data demonstrated that neither of these assumptions held. These errors in Lott and Mustard's models obscure any true relationship between the adoption of shall-issue laws and crime rates.

Errors in Characterizing Shall-Issue Laws. To accurately estimate the effects of shall-issue laws, it is, of course, essential to correctly differentiate states according to their concealed carry laws and to correctly identify when the laws were implemented. Lott and Mustard categorize states as either having shall-issue or "may-issue" gun-carrying permit regulations, but state concealed carry laws cannot be divided neatly into two groups.⁴ The authors mistakenly categorize some states as shall-issue even though the law requires applicants to be of "good moral character"⁵ or provides

authorities with discretion to restrict permits to applicants deemed to be "suitable."⁶

Lott and Mustard also use incorrect dates of shall-issue law implementation in their analyses. For example, they claim that Virginia adopted its shall-issue law in 1988. But the law continued to give authorities considerable discretion over when to issue a concealed carry permit. Some populous counties in Virginia continued to issue very few permits until 1995 (after the study period) when the state eliminated this discretion.⁷ Lott and Mustard identify 1985 as the year in which Maine liberalized its concealed carry policy. It is unclear why they chose 1985 as the year of policy intervention because the state changed its concealed carry law in 1981, 1983, 1985, 1989, and 1991.⁵

Inclusion of Inappropriate Variables in the Analyses. Lott and Mustard use arrest ratios (arrests per crime committed in a given year) in their statistical models for predicting changes in crime rates. A National Academy of Sciences panel of experts determined nearly two decades ago that arrest ratios and crime rates can not be sufficiently disentangled from one another to permit analyses such as those used by Lott and Mustard.⁸

Lott and Mustard's Findings Depart from Well-Established Facts About Crime

Shall-issue laws were adopted principally to deter predatory street crime, the most common example of which is robbery by a stranger. But Lott and Mustard's results indicate that shall-issue laws had little or no effect on robbery rates.¹ Instead, the strongest deterrent effects estimated were for rape, aggravated assault, and murder. But most rapes are committed in homes by someone known to the victim.⁹ Aggravated assaults also usually involve people who know each other,¹¹ and only 15% of murders for which the circumstances are known are the result of predatory crimes such as robbery.¹⁰ Thus, the strongest shall-issue law effects in Lott and Mustard's study were for crimes in which a victim carrying a gun in public would usually not be relevant.

Lott and Mustard argue that criminals, in response to shall-issue laws, substitute property crime for crimes likely to involve contact with victims. But their theory and findings do not comport with any credible criminologic theory because theft is the motive for only a small fraction of the violent crimes for which Lott and Mustard find shall-issue law effects. It is difficult to rationalize why a criminal would, for example, steal a car because he felt deterred from raping or assaulting someone.

Subsequent Research Disproves Lott and Mustard's Conclusions About the Effects of Shall-Issue Laws

As mentioned above, Ludwig and Black and Nagin conducted independent studies on the effects of shall-issue laws. Ludwig assessed the effects of shall-issue laws on state murder rates. He found that, after the effects of crime cycles were controlled for in the analyses, there was essentially no association between shall-issue laws and murder rates. He also found that the only hint of a decrease in murder rates associated with shall-issue laws was for murders involving victims less than 21 years of age.³ But individuals less than 21 years of age are not allowed to obtain gun carrying permits in any state, so how could they be protected by shall-issue laws? The obvious answer is that the change in these laws coincided with other changes in laws or circumstances. (See discussion of the problem of omitted variables and inadequate controls for crime cycles above.)

Black and Nagin reanalyzed Lott and Mustard's data to examine the validity of the original study's findings. As indicated above, Black and Nagin found strong evidence of errors in Lott and Mustard's statistical models. When Black and Nagin compared crime rate trends two to three years after shall-issue laws were enacted with rates two to three years prior to enactment, they found no clear pattern in the results indicating that shall-issue laws reduced violent crime. In some states violent crime decreased after these laws were enacted, while in other states shall-issue laws were followed by *increases* in violent crime. When state shall-issue laws were examined separately, the laws had no

consistent effect on any category of crime.²

In states which did experience reductions in violent crime, one cannot confidently attribute the reductions to shall-issue laws. For example, Oregon's shall-issue law was associated with lower violent crime, but the legislation which eased restrictions on concealed gun carrying also extended waiting periods and strengthened background checks for handgun purchases. The reduction in crime could be just as easily attributable to the new restrictions on handgun purchases as to the eased restrictions on carrying permits. Florida's 1987 shall-issue law was also associated with crime reductions, but, in the case of homicides, significant reductions did not occur until after a 1991 law requiring a waiting period and background check for handgun purchases was implemented.¹¹ There may be other plausible explanations for Florida's drop in homicides in the early 1990's, but it seems unlikely that it would take four or five years for shall-issue law effects to materialize.

Conclusion

In summary, we and others find numerous errors in Lott and Mustard's study which bias their findings, and little support for their conclusions that shall-issue laws reduce violent crime. Previous research suggests that shall-issue laws may *increase* homicide rates.^{11,12} Thus, the available research on shall-issue laws suggests that states should proceed with caution when considering easing restrictions on carrying concealed guns in public.

November 1996

Established in 1995 with funding from The Joyce Foundation of Chicago, The Johns Hopkins Center for Gun Policy and Research is dedicated to reducing gun violence. The center provides accurate information on firearm injuries and gun policy; develops, analyzes, and evaluates strategies to prevent firearm injuries; and conducts public health and legal research to identify gun policy needs. For more information, contact: The Johns Hopkins Center for Gun Policy and Research, School of Public Health, 624 N. Broadway, Baltimore, MD 21205-1996, 410/955-3995.

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I appear before you today representing the 3600+ law enforcement personnel that are members of the Kansas Peace Officer's Association to express our deep concern for the Concealed Carry bill coming before you. I have been a Police Officer for twenty+ years and a DARE teacher for three years. We, Kansans, already have a law in place that allows citizens to carry a firearm, as long as it is in plain view for all to see. I fail to understand the rationale of passing a law that further encumbers access to the weapon by hiding it under clothing, or in a purse or satchel.

As a former Swat Team member and Homicide Detective, I am well acquainted with firearms and the results of their use. I had two fellow officers who were friends of mine who were well trained, armed and came up against an armed adversary, who got the drop on them. They did not survive. I do not believe most private citizens, even with the required training would survive.

I do not believe that most criminals want to kill their victims, but when that criminal believes that the person might be carrying a concealed weapon, the chance for survival is greatly diminished. Instead of the Rob & Run, we may be replacing it with the Shoot, Rob & Run.

As I mentioned, I am also a DARE teacher, and the message that we are sending our children with this type of Legislation disturbs me. More guns, and guns under every jacket, in every purse is not the lesson I think that our children need to be hearing. We need to be teaching them ways to deal with societies, pressures and changes, with confidence and ability, not reacting in a paranoid manner, as if every knock on the door is a criminal encounter, to be handled in a shoot or be shot mentality.

O. J. McCart
#19 E. Peoria
Paola, KS 66071
913-294-4199

Sen. Federal & State Affairs Comm.
Date: 2-17-97
Attachment: #6

February 10, 1997

Much of law enforcement's time and effort is spent trying to minimize liability and at the same time, protect citizens. We ask our officers to make split-second life or death decisions, and we expect them to make the correct decision. If they make a wrong decision, there is no second chance for the officer or the victim.

Training is utilized continuously to prepare officers for those decisive moments; however, the frequency of episodes involving weapons directly affects the number of mistakes that occur.

Human nature is such that individuals involved in conflict feel compelled to respond; if a weapon is available (carried) the response will include the use of a weapon. Our belief is that situations may be deadly if the good samaritan is carrying a concealed weapon.

Should this bill become law, law enforcement officer will have an additional decision to make when responding to situations that involve weapons. We now deal with a "shoot/don't shoot" decision. We could be expected to add the tremendous burden of attempting to decide if we are dealing with an armed good samaritan on the scene or another bad guy.

Licensed concealed carry will also send a message to our youth much the same as our drinking age law does. The perception will be that since it is legal to carry a concealed weapon, it is okay and sanctioned by society.

It is premature to consider allowing most citizens to carry a concealed weapon until we have successfully dealt with the current weapons laws. It is very difficult for law enforcement to establish a case involving felons with weapons in possession. Society has not mandated consequences when convicted.

We should strive to decrease the number of weapon-related incidents rather than creating additional opportunities for weapons to be involved.

We ask you to consider the serious ramifications of passage of such a law and urge you not to pursue this under the guise of Family Safety, Lower Crime Rate, or what other states have.

Persons who do not choose to carry a weapon have a right to know who does.

Loren C. Anderson, Sheriff Douglas County
Chairman, Kansas Sheriff's Association Legislative Committee

Sen. Federal & State Affairs Comm
Date: 2-11-97
Attachment: # 7

POSITION PAPER
REGARDING SENATE BILL No. 21
CARRYING CONCEALED WEAPONS

PREPARED BY
CAPTAIN GLENN L. LADD
INVESTIGATION DIVISION COMMANDER
OVERLAND PARK POLICE DEPARTMENT

PREPARED FOR
THE LEGISLATURE OF THE STATE OF KANSAS
FEBRUARY 11, 1997

I am Captain Glenn L. Ladd of the Overland Park, Kansas Police Department. As a 23 year veteran of law enforcement, I strongly oppose the title captioned Senate Bill No. 21 in its current form, as well as the House Bill that would pre-empt local control. I come before this honorable group as a representative of the City of Overland Park, Kansas, the Overland Park Police Department, and a citizen of the State of Kansas.

Although the bill will not increase the number of guns in Kansas, it will increase the availability and access of weapons to those who would not normally have a handgun at their immediate disposal. These weapons may be available at times when emotions and anger are clouding better judgment, such as in arguments over traffic situations. Such a case occurred on Tuesday, February 5th, 1997 in Overland Park. Apparently, three motorists were involved in a driving situation that made them angry. Two of them started to pull over, supposedly to argue and/or fight, when one motorist took a handgun from his glove compartment and shot a passenger in another car through the vehicle door.

The bill does attempt to screen out certain undesirable persons from access; however, even very good people sometimes commit judgment errors. Allowing the carrying of concealed weapons will mean more people will possess weapons in public. This creates an increased danger to police officers. The potential for a person they are contacting in a professional setting possessing a concealed weapon will be increased dramatically. The possibility is great for a person to mishandle a concealed weapon, signaling danger to the police officer who will respond to the perceived threat accordingly.

Another dangerous situation created by the bill is to persons in the public spotlight such as entertainers, sports figures, community leaders and politicians. Much the same as persons are sometimes angry when contacting the police, they are not always pleased with the actions of those they see in a leadership role. These increased dangers will probably result in the application of safety procedures being employed by police and security personnel in the way of frisking and searching more persons for the safety of all. This may be resented by some members of the community. The bill prohibits the carrying of concealed weapons in certain public buildings such as this meeting room in the Capitol building. As a police officer, I am confused that there is such a concern over the dangers of carrying a concealed weapon that such would be prohibited in your work place, but yet the proposed bill would allow for it in the work places of my fellow police officers.

An article in *Time* magazine July 17, 1989 titled, "Death by Gun," indicated the following statistics during the first week of May, 1989:

464 Americans died violent firearms deaths, with 216 (47%) of these being suicides.
9 of these suicides killed someone else before they killed themselves.
203 were criminal homicides.
22 were preventable accidents.
Only 14, (.03%) occurred in self defense situations. (1)

With respect to homicides, nationally, the victim and the perpetrator are acquainted in 77.76% of the incidents. (2) The argument of protection is further diminished when in less than one fourth of the cases, it is a stranger that intends harm.

In the United States, handgun ownership is 13,500 per 100,000. In England, that rate is less than 500 per 100,000. The rate of homicide by handgun is 40 times higher in the United States than in England. (3) As an instructor of Criminology for many years, I theorize this is partially due to the fact that England has been settled or "civilized" many hundreds of years longer than the relatively short history the United States has experienced. We are not that far removed from the "Frontier Mentality" necessary to survive as our territories were settled and became states. This bill is a step backward in our cultural development. We do not need this law. We would be better served to address the cause of our concerns, the criminal behavior, rather than creating laws that will encourage violence. "A prohibition against carrying guns in public seemed to be related to a drop in gun crimes in Boston, and a leveling off of handgun violence in Detroit. A total ban on handguns was tried in Washington, D.C., beginning in 1976. Both gun homicides and gun suicides dropped visibly after the ban took effect, while no change occurred in homicides and suicides not committed with guns." (4) The citizens of Kansas need to focus on making laws that ensure severe punishment for those who threaten our peaceful way of life. Until punishment is made more certain, no law addressing this problem will be effective.

Kansas doesn't need this bill. Currently, we are legally able to possess firearms for sport or protection as long as they are not concealed. We are legally able to possess, and conceal for that matter, firearms in our homes and places of business. In a vast majority of the State we are able to conceal a weapon near our person (about one's person) while traveling in our cars.

The concept of a concealed weapon enhancing a citizen's level of self defense protection is a hollow one. It erroneously assumes a level of protection that is not there. It is a mistake to assume the limited training will allow a citizen to draw a concealed weapon and use it successfully before the threatening criminal uses his/hers. If a criminal suddenly produces a weapon, they have the advantage. Some may say they "have the drop on you." In these cases, concealed weapons would be of no use; in fact, a weapon in plain view, which is currently legal, would probably be more effective. If a person in this room produced a weapon with the intent to commit a robbery, others in the room that might have a gun on their person would probably be shot by the perpetrator as they attempted to draw and use the weapon. Police officers and bank guards are over powered in this manner while wearing a side arm in a holster designed for quick access.

The question of sufficient training is further distressing. With my law enforcement training and experience, I know the handling of firearms in peace keeping situations is incredibly complicated. We train our officers every month in proficiency and judgment situations. When considering the variety of experience, maturity, and wisdom of those who will be eligible to be licensed to carry a concealed weapon, I don't think it is wise to trust their judgment when to shoot and not to shoot in self defense. It requires much more training to know when NOT to shoot than to learn how to shoot. For example, we routinely train and re-train our officers to consider their surroundings before using deadly force. I am not comfortable this lesson will be adequately provided for the citizen considering the use of deadly force when they perceive danger and are in a crowd or a group is in their line of fire.

In conclusion, I firmly believe most people are law abiding and will obey the laws of the State for the good of all. This proposed bill is not a good law. It is like taking the guard off of a piece of dangerous machinery to make work at the plant easier or taking down the guard rail at a look-out point on a high cliff so people can have complete freedom to get close to the edge to get a better look. Please don't take a step backwards by passing this bill. Let's work together to pass laws to punish those that threaten our peaceful way of life.

BIBLIOGRAPHY

- (1) *TIME*, magazine, "Death by Gun", July 17, 1989
- (2) *SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS, 1993*
- (3) Freda Adler, Gerhard O. W. Mueller, William S. Laufer, *CRIMINOLOGY*, second edition, McGraw-Hill, Inc., 1995
- (4) Ibid

FEDERAL AND STATE AFFAIRS COMMITTEE

IN REFERENCE TO SB 21

The Kansas Peace Officer's Association would oppose the passage of this bill.

The KPOA does not question the Constitution of the United States nor does it question the issue of The Right to Bare Arms. The KPOA does question the need for people to Carry Concealed Weapons. The view of the KPOA is that these two issues are not the same issue and should not be referred to as the same issue as some people have done. If the Carry Concealed Issue is attached to a protection or Anti-Violent Crime Issue, maybe this should be addressed through legislation to actually punish the offender for his actions. From a Law Enforcement view point the passage of this bill will do no more than put more guns on the street. It does nothing to address the issue of accountability or the responsibility of those who choose to carry a gun concealed.

In looking at this particular bill there seem to be several expectations of the KBI. I am sure they would attempt to fulfill these expectations to the best of their ability, but I don't understand how they will be able to this and not suffer financially. The amount allotted in the application fee would not begin to cover their expenses.

Further more this bill appears to be somewhat ambiguous. Part of the bill requires the applicant to be scrutinized as to their history or past behavior. I assume this is an attempt to make sure anyone issued a permit to carry a concealed weapon would be law abiding and of the highest moral standard. Another part of this bill would prohibit these people from carrying the concealed weapon into certain places. I guess the question is, if this is such a good bill, why can't the people who have passed the qualifications to carry their concealed weapon carry it where ever they want to? Or is this just an appeasement in the effort to pass a bad bill?

Another thing that seems to be absent from this bill is the fact there is no provision or condition for any type of liability insurance. Every one else in the state who is currently authorized to carry a concealed weapon is covered by liability insurance. All Private Investigators who are licensed are required to have it, and all commissioned Law Enforcement Officers are covered by their employers. The state of Kansas requires a licensed driver of a motor vehicle to have liability insurance, but wouldn't require someone who is licensed to carry a concealed weapon to have any. There appears to be no logic behind this.

The KPOA also opposed the idea of pre-emption. Different parts of the state have certain problems that may not exist in other parts of the state. Certain cities in the state have different problems than other cities in the state. Pre-emption would not allow certain areas or cities to address the problems they may have in reference to this bill. On the other hand pre-emption could

unduly restrict people in some areas for no reason. It seems pre-emption in general in relation to this bill would be a mistake.

The KPOA would support SCR1606. The KPOA would support any vote by the people of the State of Kansas on this issue.

Lane K. Ryno (Sergeant)

A handwritten signature in cursive script that reads "Lane K. Ryno".

Emporia Police Department
KPOA Legislative Committee