ALASKA LEGISLATURE 1795

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percent of the rate for the rest of the nation. In the period 1980-89, under the old, discretionary concealed handgun permit law, Idaho's murder percentage rate had declined, staying in the twenty-eight to forty-eight percent range. In the two following years, the murder rate continued to decline, reaching nineteen percent of the United States murder rate in 1991. Is this result just another statistical fluke of small population?

The murder decline in 1990 could be just the result of Idaho's small population causing a random fall in murder rates, similar to the pattern in previous years. When the murder percentage rate fell again in 1991, however, one might suspect that progress is being made. Nevertheless, the 1992 [illegible] suggest random variation was the explanation for the 1990 and 1991 declines.

I. Montana

In 1991, Montana adopted a statute similar to Idaho's. Whereas the old Montana law gave judges considerable discretionary authority to issue concealed weapon permits, the new statute was unambiguous and nondiscretionary: "A county sheriff shall, within 60 days after the filing of an application, issue a permit to carry a concealed weapon to the applicant."[99]

Unlike in Idaho, an applicant must be a resident for at least six months, be at least eighteen, and have some sort of state-issued picture identification card. The prohibited categories are similar to the other states: those ineligible under state or federal law to possess a firearm, those convicted of a felony, those with an outstanding arrest warrant, drug addicts (including such determinations in civil proceedings), the "mentally ill, mentally defective, or mentally disabled," those dishonorably discharged from the United States military, or those convicted in the last five years[100] of violating Montana's statutes that prohibit carrying a concealed weapon while under the influence, or in a prohibited place, such as a government building, bank, or bar.[101]

Montana has an escape clause similar to that of Pennsylvania and Oregon. The clause allows a sheriff to deny a permit to an applicant based on "reasonable cause" for concern about "the peace and good order of the community . . . ."[102] While the Idaho statute allows the sheriff the discretion to require proof of firearms competence, the Montana statute requires an applicant to complete any of a number of firearms safety courses. The statute purposely avoids naming the NRA, by referring to "an organization that uses instructors certified by a national firearms association."

99. MONT. CODE ANN. § 45-8-321 (1993).
100. *Id.* § 45-8-321(1)(c).
101. *Id.* § 45-8-327, -328.
102. *Id.* § 45-8-321.

Also unlike the Idaho law, the Montana statute refers to the carrying of concealed weapons as "this privilege" rather than as a right.[103]

By the end of 1993, Montana had 1369 residents with carry permits.[104] As demonstrated by graphs 17 and 18, Montana, like Idaho, has a very small populace with a resultant "notchy" murder percentage rate. Therefore, one should not attach too much significance to the apparent first year's murder reduction, especially since it followed 1990, a year with an unusually high murder rate percentage. Nonetheless, the 1991 Montana murder rate percentage was the lowest since 1975, and 1992's murder rate percentage is near the bottom of the rates for the period 1975-91.[105] Only time will provide evidence as to the effects of the Montana concealed handgun permit law.

J. Mississippi

Mississippi adopted a nondiscretionary concealed handgun law effective July 1, 1991. The statute requires an applicant to (1) be a resident of the state for at least twelve months, (2) be twenty-one, (3) have no "physical infirmity which prevents the safe handling of a pistol or revolver," (4) have no felony conviction in the United States, (5) have no drug abuse problem (as indicated by commitment to a treatment facility or conviction within the preceding three years), (6) have no mental hospital commitments in the last five years, (7) "not [have] been adjudicated mentally incompetent," and (8) not be a fugitive from justice.[106] The use of discretion by the Mississippi Department of Public Safety in issuing a permit is limited to one area. If a person has been convicted of "one or more crimes of violence constituting a misdemeanor" in the preceding three years, the department is not required to issue a permit.[107]

The permit is valid for four years, and the application fee is $100. The renewal fee is $50. Unlike many of the other non-discretionary permit laws, Mississippi's law includes a long list of places where this permit is *not* valid: police stations, courthouses, public parks, bars, schools, and meetings of the Mississippi Legislature.[108]

The Mississippi Department of Public Safety had issued at least 7000 permits as of October 27, 1993.[109] That means .27% of the total popula-

103. *Id.*
104. *Concealed Weapons Permits Skyrocket in Montana*, GUN WEEK, Mar. 11, 1994, at 7.
105. The comments about declining United States murder rates in 1992 and Idaho's murder rate percentage rise apply here as well.
106. MISS. CODE ANN. § 45-09-101(2) (1993).
107. *Id.* § 45-09-101(3).
108. *Id.* § 45-09-1[illegible](13).
109. Letter from Jim Ingram, Comm'r, Dep't of Pub. Safety, to Donald Newcomb

G. West Virginia

West Virginia adopted a nondiscretionary permit system as the result of its voters adding a right to keep and bear arms provision to the state constitution in 1986.[87] A person charged with carrying a concealed weapon in violation of a state statute challenged the statute on the grounds that it violated the right given by the West Virginia Constitution to keep and bear arms. The plaintiff argued that the law gave too much discretion to local government to deny permits. The West Virginia Supreme Court agreed.[88]

The West Virginia legislature responded by writing a new concealed weapon permit law requiring an applicant to (1) be a U.S. citizen, (2) reside in the county where application was made, (3) be at least eighteen, (4) not be a drug or alcohol addict, (5) have no conviction of a felony or violent crime involving a deadly weapon, (6) be "physically and mentally competent to carry such a weapon," and (7) at least for first time applicants, complete one of a number of firearms safety classes.[89]

The lower courts were recalcitrant in issuing permits under the new law, and applicants who were denied permits appealed. In *In re Metheney*,[90] the West Virginia Supreme Court of Appeals clearly specified that while a judge was allowed discretion in determining whether the applicant's purpose was actually "defense of self, family, home or state, or other lawful purpose,"[91] if the evidence showed such to be the case, the judge was obligated to issue a permit.[92]

In West Virginia, the Department of Public Safety maintains information on concealed weapon permits. However, the filing system "is manual at this time, therefore, it would be virtually impossible to compile the data requested."[93]

Because West Virginia has a small populace, even a single criminal can make an enormous difference in the state's murder rate. As a result, the examination of the rate is inconclusive. As shown in graphs 13 and 14, the year the new law was passed, West Virginia experienced a dramatic increase in its murder rates. That increase was followed by a decline in 1990, and

87. City of Princeton v. Buckner, 377 S.E.2d 139, 141-43 (W. Va. 1988).
88. *Id.* at 144-45.
89. W. VA. CODE ANN. § 61-7-4(a) (1992). The statute additionally requires "[t]hat the applicant desires to carry such deadly weapon for the defense of self, family, home or state, or other lawful purpose." *Id.*
90. 391 S.E.2d 635 (W. Va. 1990).
91. *See supra* note 89.
92. 391 S.E.2d at 638.
93. Letter from T.A. Barrick, W. Va. Dep't of Pub. Safety, to author Cramer (Aug. 26, 1992) (on file with author).

increases in 1991 and 1992. The number of murders in 1989 was 121; in 1990, 102; in 1991, 111; in 1992, 115.

H. Idaho

Idaho's change to a nondiscretionary permit system is more complex than most of the other states examined. As originally adopted in 1990, the language of the first paragraph was nearly identical to Washington's statute, even to the extent of asserting that a "citizen's constitutional right to bear arms shall not be denied him, unless . . . ."[94] Like the Washington statute, the Idaho law provided for permits for both residents and non-residents. (The provision for non-resident permits was removed, effective July 1, 1991. An amendment effective April 2, 1991, adjusted the formula used for allocating the license fee to the various parts of the government.)[95]

Even with subsequent amendments, the Idaho statute is somewhere between the Washington and Oregon statutes in its liberality. It denies a permit to non-residents, anyone ineligible to own a firearm under state or federal law, anyone awaiting trial on or convicted of a felony, fugitives from justice, drug addicts, those lacking "mental capacity" as defined by Idaho law, the mentally ill, gravely disabled, or incapacitated, as defined by Idaho law, those dishonorably discharged from the U.S. military, anyone convicted of a violent misdemeanor in the last three years, and illegal aliens.[96]

There is *some* discretion in the Idaho statute—but in such a limited way as to provide no real obstacle to those over twenty-one. While the first part of the statute declares that those under twenty-one are ineligible for a permit, a later part provides that a sheriff *may* issue a carry license to an applicant between eighteen and twenty-one if the sheriff feels that good cause exists.[97] For an applicant over twenty-one, who is not in one of the prohibited categories listed above, the only discretionary authority available to the sheriff is that, "the sheriff may require the applicant to demonstrate familiarity with a firearm by any of the following [firearms safety classes], provided the applicant may select which one . . . ."[98] The list of available firearms safety classes is sufficiently broad—including any NRA firearms safety, training, or hunter education course—that even if a sheriff exercises discretion in requiring one of these courses, it provides little obstacle to obtaining a permit.

As is typical of states with small populations, Idaho's murder rate is subject to major variations from year to year. As indicated in graphs 15 and 16, in the late 1970s the Idaho murder rate was as high as sixty-three

94. IDAHO CODE ANN. § 18-3302 (1987 & Supp. 1994).
95. *Id.* § 18-3302 compiler's notes.
96. *Id.* § 18-3302(1).
97. *Id.* § 18-3302(11).
98. *Id.* § 18-3302(13).

tion of the state obtained a permit in a little over two years following the passage of the new law. Like Montana, Mississippi's experience with nondiscretionary concealed handgun permit laws is too recent to meaningfully judge the results. However, as graphs 19 and 20 indicate, one can at least conclude that the murder rate did not rise dramatically during the first one and one-half years after the passage of the new law.

K. Wyoming

Prior to 1994, Wyoming's concealed handgun law was somewhat different from that of most other states. Each county's sheriff was allowed to issue permits by discretion, but such permits were often not recognized in other counties.[110] As State Senator Mark Harris explained, "I tried to get permits from all the sheriffs along the Interstate from my home to Cheyenne [where the Wyoming Legislature meets] and I couldn't."[111] As a result, Senator Harris introduced legislation to reform the existing concealed weapon law.[112]

The usual provisions appear. Applicants must (1) be a resident of Wyoming for at least six months, (2) be at least twenty-one, (3) "not suffer from a physical infirmity which prevents the safe handling of a firearm," (4) be "not ineligible to possess a firearm" under federal law, (5) have no drug or alcohol abuse history, and (6) have no mental illness history. The statute also requires the applicant to demonstrate "familiarity with a firearm" through any of a wide variety of courses listed as acceptable. The Wyoming Attorney General's office is responsible for issuing the permits. The only discretion allowed in the issuance of permits is that applicants *may* be rejected for pleading guilty or no contest to any misdemeanor crime of violence in the preceding three years.[113]

Like that of many of the other states, Wyoming's law allows the sheriff of the applicant's residence county to deny a permit if that sheriff believes "that the applicant has been or is reasonably likely to be a danger to himself or others, or to the community at large as a result of the applicant's mental or psychological state, as demonstrated by a past pattern or practice of behavior . . . ." Similar to the practice in Idaho, permits *may* be issued to applicants between eighteen and twenty-one at the recommendation of the applicant's sheriff.[114]

(Oct. 27, 1993).

110. WYO. STAT. § 6-8-104 (1994).

111. Sen. Mark Harris, telephone conversation with author Cramer, April 1994.

112. WYO. STAT. § 6-8-104 (1994).

113. *Id.* § 6-8-104(b).

114. *Id.* § 6-8-104(g), (j).

The application fee is $50 plus actual fingerprinting costs, and the permit is good for five years. The permit must be issued or denied within sixty days of application.[115]

Perhaps reflective of Wyoming's experience with permits good only in the county of issuance, the Wyoming law recognizes permits issued in other states, as long as they are issued by "a state agency."[116] It is not clear whether permits issued under the authority of a state law, even if issued by a county sheriff, would qualify under this provision.

L. Arizona

Although Arizona has long allowed open carry of handguns, it did not have even a discretionary permit system for concealed carry. In April of 1994, a statute originally intended to prohibit the carrying of guns by minors was amended to create a nondiscretionary, concealed weapon permit system for adults. The new law requires the Department of Public Safety to issue a permit to anyone who is a resident of the state, at least twenty-one, not under indictment for and not convicted of a felony, not mentally ill or "adjudicated mentally incompetent or committed to a mental institution," "not unlawfully present in the United States," and who has completed a firearms safety training program approved by the Department of Public Safety.[117]

Unlike many of the other state laws that simply required some sort of safety training as a condition of permit issuance, Arizona specifies what such training must include. The training must deal with "the legal issues relating to the use of deadly force" along with the safe handling and maintenance of weapons.[118]

Permits must be issued or denied within sixty days. The permit is good for four years. Unlike the other state laws examined, the application fee is not specified in the statute, but is to be "determined by the director of the [Public Safety] department."[119] There is neither a provision for non-resident application for a permit, nor a recognition of out-of-state permits. Of course, Arizona law does allow non-residents to carry openly without need for a permit.

M. Tennessee

In May 1994, Tennessee passed a concealed handgun permit law that, while not as strong as some of the other laws considered, is nondiscre-

115. *Id.* § 6-8-104(e), (m).

116. *Id.* § 6-8-104(n).

117. ARIZ. REV. STAT. ANN. § 13-3112(E) (1994).

118. *Id.* § 13-3112(N).

119. *Id.* § 13-3112(F).

tionary. The revised version of Tennessee Code § 39-17-1315 changes, "the sheriff may issue such a permit . . ." to "the sheriff *shall* issue such a permit . . . ."[120] Unlike some of the other laws examined, the law does not explicitly prohibit the issuance of permits to convicted felons. The law rather allows the sheriff to refuse to issue a permit if, "in the sheriff's opinion, [the applicant] has a history of instability or physical infirmity," or "poses a likelihood of risk to the public . . . ."[121]

Tennessee is unique among carry reform states in its requiring an applicant to have liability insurance or a surety bond of at least $50,000. This requirement, along with the required completion of a training course in firearms, was retained from the prior law.[122]

N. Alaska

Like Arizona and Wyoming, Alaska has long allowed the open carry of handguns. In 1994, Alaska passed a concealed handgun permit law that, at first glance, seems similar to the other laws examined. However, the Alaska version contains some surprising differences. Nonetheless, it is still a nondiscretionary permit law.

The qualifications are quite similar to the previously examined statutes. The applicant must be twenty-one, "eligible to own or possess a firearm under the laws of this state and under federal law," not convicted or under indictment for a felony, not convicted of any of a number of misdemeanors within the last five years or currently under indictment for any of those misdemeanors, "not now suffering, and [having] not within the five years immediately preceding the application suffered" from mental illness, not adjudicated "mentally incapacitated," and a resident of Alaska. Anyone currently in a court-ordered drug or alcohol program is also prohibited, as well as anyone in such a program within the previous three years.[123]

Like many of the other states, Alaska's law requires a demonstration of competence with a handgun. Unlike the other states, however, the certificate of competence must specify the "action type and caliber of handgun or handguns" with which the applicant has demonstrated competence. A permit holder may carry a lesser caliber gun of the same action type, but not a different action type.[124]

Like Arizona, Alaska specifies considerable detail about the content of the firearms safety course, including knowledge of "Alaska law relating to

120. The statute continues, "The Sheriff *may*, for good cause and in the reasonable exercise of discretion, deny a permit." TENN. CODE ANN. § 39-17-1315(b)(1) (1991 & Supp. 1994) (emphasis added).

121. *Id.* § 39-17-1315(b)(1)(C).

122. *Id.* § 39-17-1315(b)(2).

123. ALASKA STAT. §§ 11.61.220(b), .220(f); 18.65.705 (1994).

124. *Id.* § 18.65.715(a).

firearms and the use of deadly force."[125] Unlike in all the other states examined, a permit holder must demonstrate competence not only when applying for a permit, but also in the twelve months immediately before renewing a permit.[126]

The application fee is to be based on the actual costs of processing the application fee, but not to exceed $125 for original application and $60 for renewal.[127] Permits are valid for five years. Permits must be issued or denied within fifteen days of the FBI providing background check information, and the background check request to the FBI must be made within five days of receipt of the application.[128]

Permits are not valid in a number of places that other states also restrict: jails, police stations, courthouses, and airline terminals. In addition, Alaska restricts concealed carry in many places where other states provide no such restriction: school grounds, "a building housing only state or federal offices or the offices of a political subdivision of the state," "a vessel of the Alaska marine highway system," "a facility providing services to victims of domestic violence or sexual assault," financial institutions, and residences, businesses, or charitable organizations that have posted a sign prohibiting concealed carry.[129]

Most interesting of all is the authority given to cities to prohibit concealed carry by permitees. To do so, however, at least ten percent of the voters (as counted at the last regular election) must petition the city to put the matter on the next special election ballot, and a majority must vote to prohibit concealed carry.[130]

In signing the law, Governor Hickel explained that the decisive factor was the women who called his office: "Those that impressed me the most were the women who called and said they worked late and had to cross dark parking lots, and why couldn't they carry a concealed gun?"[131]

The Alaska law certainly suggests less trust in people than many of the other laws examined. Most indicative of this lack of trust is the specific restriction of the sort of handguns that may be carried concealed. The law prohibits the carrying of derringers and "miniature handguns."[132] Nearly every other state allows the permit holder to decide what sort of handgun to carry for self-defense. Alaska requires carry guns to have trigger guards so as to reduce the risk of accidental discharge—a not entirely unreasonable

125. *Id.* § 18.65.715(a)(1).

126. *Id.* § 18.65.715(b).

127. *Id.* § 18.65.720.

128. *Id.* § 18.65.700(b).

129. *Id.* § 18.65.755 (Oral notice is sufficient for a residence.).

130. *Id* §§ 18.65.780, .785.

131. *Alaska Legalizes Concealed Guns*, N.Y. TIMES, May 29, 1994, § 1, at 6.

132. ALASKA STAT. § 18.65.790 (1994). The statute defines miniature handguns as handguns lacking a trigger guard and having a barrel length of 3.5 inches or less.

requirement. Nonetheless, the authors are not aware of a single instance of an accidental discharge involving a derringer or other gun without a trigger guard in the states which do not specify which type of gun may be carried.

Finally, although two international jurisdictions have changed their handgun carry laws recently, data from which to draw any conclusions about the effects of these new laws is unavailable. Citizens of Lithuania and Estonia are now allowed to own and carry handguns for protection. The laws were enacted in response to the rising crime rates now characteristic of most of the former Soviet republics.[133]

O. Analysis of State Homicide Data

In the states discussed above, the dire consequences predicted by the gun control lobbies were not realized. That the carry laws appear not to have had a noticeable impact on the homicide rate in most states—Florida, perhaps, excepted—should not be surprising. To begin with, in most of the states studied, the general rise and fall of murder rates before the new laws took effect roughly approximated the rate in the rest of the country. This similarity suggests that changes in murder rates are generally determined by national causes.

Many criminologists have suggested that the state of the economy has a significant impact on murder rates, and that the mass media's glorification of violence plays a significant role in promoting violence.[134] Almost all criminologists agree that demographics play a crucial role in crime rates. For example, because males in the late teens and early twenties age groups are disproportionately involved in violent crime—about fifty percent of murderers are under twenty-five—as the percentage of the population in this age group increases, so will the murder rate.[135] One must also recognize the dramatic effects a small number of murderers can have in some of the smaller states from year to year. The murder rates of West Virginia, Idaho, and Montana are all highly variable from year to year because the populations are small. A single psychopathic criminal can dramatically raise the

133. *Baltics Take Up Arms*, AP, Apr. 1, 1994.

134. A number of studies have examined whether and how violence in the electronic media promotes violence. Brandon Centerwall, *Television and Violence: The Scale of the Problem and Where to Go from Here*, JAMA, June 10, 1992, at 3059-63; Wendy Wood et al., *Effects of Media Violence on Viewers' Aggression in Unconstrained Social Interaction*, PSYCHOLOGICAL BULLETIN, May 1991, at 371-83 (one of the more detailed recent attempts to analyze existing statistical studies of the effects of television and film violence on children). *But see* Mary B. Harris, *Television Viewing, Aggression, and Ethnicity*, PSYCHOLOGICAL REPORTS, Feb. 1992, at 137-38 (suggesting that the link is so weak as to be undetectable).

135. BUREAU OF JUSTICE STATISTICS, REPORT TO THE NATION ON CRIME AND JUSTICE, 543 (1994) (provides information on the relationship between violent crime arrests and offender age).

murder rate one year, followed by a dramatic drop when that criminal is caught or moves on. As a result, the data of the larger states are more useful for judging the effects of the nondiscretionary issuance laws.

What, if any, conclusions may be drawn from the above state-to-state analysis? In Florida, carry reform appears to have done some good and perhaps saved a number of lives. Nevertheless, much more detailed statistical analysis would be required to isolate with certainty the carry reform law as a factor in the homicide rate decline. In Virginia, where some judges subverted the clear intent of the legislature, the reform law appears to have been ineffective. In Georgia, where the change resulted from an Attorney General's reinterpretation of the law, the evidence suggests that carry reform may have reduced murder rates. The West Virginia results are inconclusive. In Oregon, because the new law took effect with murder rates already in decline, it is impossible to determine whether or how much the new law contributed to that decline. In Pennsylvania, legal reform may arguably have done some good in Philadelphia, and apparently did no harm outside of Philadelphia. The Idaho, West Virginia, Montana, and Mississippi results are inconclusive.

In several of the states, the positive results seem to have been most dramatic the year of adoption, with results tapering off afterwards. This pattern may suggest that the publicity about the law either discouraged criminals or encouraged a short burst of law-abiding citizens applying for permits.

The most significant, certain conclusion to be drawn is that neither large nor small states evidence obvious long-term increases in murder rates after passage of these laws. The experience of the carry reform states plainly shows that homicide rates will not *increase* as a result of crimes committed by persons with carry permits. Carry reform legislation may or may not reduce the homicide rate, but reform legislation apparently does *not* raise the homicide rate.

III. ADDITIONAL CARRY REFORM RESEARCH

In addition to the state-by-state research discussed above, two other research projects have examined the impact of concealed carry laws. One study (performed by author Cramer) looked at comparative data from California counties. The other study, a master's thesis at a public policy school, analyzed crime trends in six states.

A. Effects of Different Policies Among California Counties

To carry a concealed firearm in California requires a permit.[136] Open carry of a loaded firearm is prohibited in cities and the unincorporated parts

136. CAL. PENAL CODE § 12025 (West 1992 & Supp. 1994).

of many of the more populated counties.[137] Even in those unincorporated areas where open carry of a loaded firearm is legal, social pressure or police harassment can make carrying a gun for self-defense impractical.

Concealed carry permits (CCWs) are issued at the discretion of the chief of police of a city in the county, or sheriff of the county, in which the applicant resides. As long as the applicant passes the background check provided by the California Department of Justice, a chief of police or sheriff may issue a permit.[138]

The ideal test of how different government approaches to CCWs affect crime rates would be to contrast two counties with comparable policing, laws, and demographics, with the only difference being that one county issued CCWs readily and the other did not issue them at all. Such a perfect test case does not exist; what does exist is an enormous variation in CCW issuance rates in California. In some counties, CCWs are nearly unobtainable; in other counties, more than three percent of the *total* population have such permits.[139] The question remains: Is there any evidence to support the notion that where CCWs are easily obtained, guns are more likely to be used criminally?

Before presenting the data, consideration should be given to the circumstances in which carrying a handgun for self-defense in public might be useful. The majority of murders in the United States are unlikely to be prevented by wider issuance of such permits. Domestic disturbances turned lethal usually do not take place on the streets, except as spillover from a fight inside a private dwelling. The homicidal attacks against which carrying a gun in public has the most hope of making a difference are those committed in the course of some other public felony such as robbery, burglary, rape, or kidnapping.

Of the 18,269 murders committed nationally in 1988, about nineteen percent were "felony type," one percent were "suspected felony type," and twenty-seven percent were classed as "Unable to determine"—the police either do not know who did it, or the suspect or witnesses could not or would not explain it.[140] Some of the remaining murders—"Romantic

137. *Id.* § 12031.

138. *Id.* § 12050.

139. *See infra* note 145.

140. FEDERAL BUREAU OF INVESTIGATION, CRIME IN THE UNITED STATES, 12-13 (1988) [hereinafter FBI]. In a precise legal sense, a "felony murder" is an unintentional murder that occurs during a violent felony. For example, a bank robber shoots a gun into the ceiling to get the attention of the customers of the bank; the bullet strikes a chandelier which falls on a customer and kills her. Under traditional common law rules, the bank robber would be guilty of murder ("felony murder") under the theory that perpetrating the violent felony evinced such a disregard for human life that it is fair to punish the robber for the fatal, but unforeseen consequences of the robbery.

"Felony murder" is used in this Article and in FBI statistics in a broader sense to include all murders related to violent felonies, whether or not intentional. For example, a

triangle," "Argument over money or property," "Other arguments," and "Miscellaneous nonfelony type"— might be preventable by wider issuance of CCWs, but only to the extent that these involved stalking-type situations or confrontations in public areas. However, to the extent that murders involved fights between people who lived in the same household, or who met in other private circumstances, laws relating to carrying of concealed weapons would have little impact.

The California study presumes that more civilians carrying handguns for self-defense will not reduce the nonfelony murder rate: that all the nonfelony murders involve fights inside a home or other circumstances where handgun carrying would be irrelevant. What is left to consider is the twenty percent of murders that are felony or suspected felony murders. Some felony murders are simply not preventable by armed citizens because of the weapons used. For example, arson was the method for 258 of the murders committed nationally in 1988.[141] Similarly, murders committed with poison, explosives, and narcotics would seem outside the realm of an armed defense solution. But for the ninety-seven percent of felony murders using direct physical force—guns, knives, clubs, bare hands, or strangulation,[142] a handgun carried on the person of the intended victim or a fortuitous bystander at least has the *potential* to save the victim.

As with murder, many rapes do not involve attacks by total strangers outside the home. Concealed weapons permits are thus unlikely to help prevent either incestuous rape in the home or date rape. However, carrying of concealed weapons could possibly help prevent rapists who attack strangers in parking lots and other public spaces. Of course, to the extent that men continue to obtain concealed carry permits in greater numbers than women, the impact on rape would be reduced.

The crimes which a concealed handgun carried on public streets has the greatest potential to prevent are robbery and the murders which result from a robbery. Only 33.4% of reported robberies involve the use of a firearm, so an armed potential victim stands an excellent chance of defending himself successfully in the remaining two-thirds of robberies in which the perpetrator attempts to use brute force or weapons inferior to a gun.[143] A trained citizen could arguably prevail in a fight with a criminal who had a gun, because unlike many trained citizens, few criminals practice with their guns. Nonetheless, the citizen's odds of success are obviously higher when he is better-armed than the attacker. In addition, a significant portion of robberies take place in public places where the victim's carrying a concealed handgun would be relevant. In western states (including California), 49.7% of

street robbery in which the robber deliberately kills the victim in order to eliminate a witness would be a "felony murder" for purposes of this Article.

141. *Id.*

142. *Id.*

143. *Id.* at 21.

robberies in 1988 were described by the FBI Uniform Crime Reports as "Street/highway."[144]

The final crime to be measured is aggravated assault, a crime which also frequently takes place out of doors. Some people have long held as an article of faith that the presence of a gun turns a fistfight into a gunfight, and battery into at least attempted murder. Accordingly, if the widespread availability of concealed firearms permits results in an increase of the murder rate, one mechanism might be by the escalation of the seriousness of conflicts that begin with an aggravated assault. Conversely, if the widespread carrying of concealed firearms proves to be a general deterrent effect to crime (because criminals do not know which potential victim is carrying a gun), then aggravated assault might be expected to decrease.

1. Permit Issuance In California

The California Department of Justice maintains statistics on issuance of CCWs, broken down by the particular police agency issuing the permit.[145] These statistics provide some great surprises. The City of Los Angeles, for example, with almost 3.5 million people, had *no* concealed weapons permits outstanding in 1989. Note that Table 1 shows concealed weapon permit figures by *county*, not city: all the permits issued in Los Angeles County in 1989 were issued by either the Los Angeles Sheriff's Department or by one of the other cities in Los Angeles County. By contrast, many small California cities with populations less than 10,000 had dozens of outstanding CCWs.

The study of the relationship between CCWs and crime rates on a county-by-county basis makes sense for two reasons. First, California law allows a person to obtain a CCW either from any police chief or the sheriff of the county in which the applicant resides. Second, few people restrict their activities to the city in which they live. The California study divides the state's fifty-eight counties into three groups: those counties where fewer than one-tenth of 1% of the population have CCWs; those counties where .1% to 1% of the population have CCWs; and those counties where more than 1% of the population have CCWs. As used here, "population" means everyone living in the county, including large numbers of people who are ineligible for CCWs because of age, criminal history, or mental illness.[146]

The first group is comprised of nineteen predominantly urban or urban dominated counties. The number of CCWs in these counties is less than

144. *Id.* at 19.

145. CALIFORNIA DEP'T OF JUSTICE, AUTOMATED FIREARMS UNIT LICENSES TO CARRY CONCEALED WEAPONS TOTAL (1989). This report provides all CCW numbers contained in this Article.

146. All county population figures and crime rates are from OFFICE OF THE CALIFORNIA ATTORNEY GENERAL, CRIMINAL JUSTICE PROFILE (Statewide) 23-25 (1989).

one-tenth of one percent of the total population. In some of these counties, a criminal faces almost no risk of attacking a legally armed civilian on the street. In San Francisco, only 1.5 per 100,000 people have CCWs; in Los Angeles County, fewer than 5 per 100,000 people have CCWs. Stated another way, each of the following events are about equally likely to occur:

- A criminal will attack a Los Angeles citizen who has a permit to carry a concealed weapon.
- A poker player will be dealt a straight flush in the first five cards.[147]
- A randomly selected high school football player will one day be the starting quarterback in the Super Bowl.[148]

Thus, when a criminal in Los Angeles or San Francisco attacks someone, that criminal can essentially ignore the risk that the victim may be legally carrying a gun: the criminal is more likely to attack an off-duty or plainclothes police officer than a legally armed civilian. This probability is particularly significant because the first group of counties contains five-sixths of the state's population. As a result, the crime rates in these counties largely determine the statewide averages.

The second group is comprised of twenty-two counties, in which between .1% and 1% of the population held a CCW in 1989. Primarily rural, some of the counties, like Fresno and Sonoma, have at least one medium-sized city. This group's major violent felony rates were below the statewide average, although rape was barely so. In fact, the murder rate for this group was the *lowest* of all three groups of counties. However, the rate was not much lower than that of the third group.

The third group is comprised of seventeen counties, in which more than one percent of the population has a CCW. These counties are predominately rural with only a few small cities. Most of these counties have so few people that crime rates per 100,000 people can be somewhat misleading. For example, a single murder can make a county of 3600 people appear artificially dangerous. By contrast, some of these counties went all of 1989 without a murder. In 1989, this group had the lowest rates for rape, aggravated assault, and robbery. However, this group had a slightly higher murder rates than did the second group examined above. Even so, the third group's rate was *still* less than sixty-nine percent of the statewide average. Even this result may be a statistical fluke, because this third group of counties had the lowest murder rate in 1988. To give some idea of how smaller sample sizes can affect results, if these seventeen counties had experienced seven fewer murders in 1989, the third group would have had the lowest crime rates in *all* categories of violent crime. Significantly, more

147. LEO KRANTZ, WHAT THE ODDS ARE 213 (1992) (the odds are 72,192 to 1).

148. *Id.* at 108 (100,000 to 1).

than half the murders committed in the third group were in the two counties (Madera and Yuba) having the *lowest* CCW issuance rates in this group.

Now look at Table 2. Theoretical analysis predicted a correlation between a higher number of CCWs and a more effective prevention of robbery: and, indeed the liberal issuance counties experienced robbery rates that were only *fifteen percent* of the statewide average. The incidence of rape was expected to be relatively unaffected by a higher number of CCWs; and while rape rates were lower than the statewide average, the difference was not dramatic. Finally, murder and aggravated assault rates were about one-third below the statewide average, even with all those guns ready to be drawn.

TABLE 1: CALIFORNIA CONCEALED WEAPONS PERMITS & VIOLENT CRIME RATES

	CCW's per 100,000	Aggravated Assault	Homicide	Rape	Robbery
Highly restrictive counties	28.3	621.5	11.7	41.5	372.7
Moderately restrictive counties	437.5	449.9	6.5	40.4	124.4
Non-restrictive counties	1,736.5	414.2	7.5	31.3	48.5
California total	122.5	593.5	10.9	41.1	331.8

TABLE 2: CALIFORNIA COUNTY CRIME RATES AS A PERCENTAGE OF STATEWIDE AVERAGES

County Group	Permits per 100,000	Aggravated Assault	Homicide	Rape	Robbery
Highly restrictive counties	less than 100	105%	107%	101%	112%
Moderately restrictive counties	100 to 1,000	76%	60%	98%	38%
Non-restrictive counties	greater than 100,000	70%	69%	76%	15%

2. What Do the Data Tell Us?

It would, of course, be foolish to assert that the large percentage of outstanding CCWs in the third group of counties is *the* reason for the lower rates for aggravated assault, robbery, and rape. These are rural counties, with dramatically different demographics than the urban counties in California. Nonetheless, the correlation between the number of CCWs and the lower rates may be *a* reason. Why are the aggravated assault rates so low in these counties where an individual would seemingly have trouble walking down the street without passing an armed civilian? Perhaps the conventional wisdom—*have* gun *will* fight—is simply wrong. Perhaps the presence of a gun instead causes a great many aggressors simply to withdraw from the possibility of fight, because the risk of death is so obvious. The above are all suppositions. Nevertheless, even with all those people authorized to carry guns, the rates for murder, rape, aggravated assault, and most dramatically, robbery, were lower than the statewide average.

Put another way, although the percentage of the population who are licensed to carry a gun in this third group of counties is roughly analogous to the percentage of the U.S. population that watches the Phil Donahue show, the murder rate remains quite low.[149] Considering the large number

149. One out of 15 households with television sets watches the Phil Donahue show. *Id.* at 260.

of CCWs outstanding in this third group of counties, *if* greater numbers of CCWs are really a threat to public safety, the other factors that determine murder and aggravated assault rates must be truly enormous to so completely overwhelm the effects of all those CCWs.

In sum, the comparative data from California counties suggest, but do not prove, that making concealed carry permits available to licensed, trained citizens may reduce the robbery rate, and perhaps the rates for other violent crimes. Conversely, the data are inconsistent with the hypothesis that CCW issuance will lead to more murders or other crimes.

B. Six-State Comparative Study

Brian Withrow, a master's degree candidate at Southwest Texas State University, took a different approach to the study of carry reform.[150] Withrow looked at three states which had implemented carry reform: Florida, Pennsylvania, and Oregon. He then paired each state with the closest matching state having similar demographics, but no carry reform. He paired Florida with Texas, Pennsylvania with Illinois, and Oregon with Arizona. As Withrow acknowledges, the pairings do not represent exact matches but only as similar as is possible.[151] The attempts to match any pair of states suffers from this limitation.

Withrow examined each pair of states to test the impact of carry reform laws.[152] If carry reform laws were effective in producing a statistically noticeable reduction in the crime rate, then a state which enacted carry reform would be expected to show an improving trend (relative to a non-reform state) in various crime categories. For example, assume Pennsylvania (pre-reform) and Illinois (no reform) had similar rape rates before concealed carry reform was enacted in Pennsylvania. However, if after Pennsylvania reformed its carry law, the Pennsylvania rape rate remained stable while the Illinois rate rose sharply, such a result would be consistent with the hypothesis that concealed carry reduces the rape rate.

The Withrow research suggests that concealed carry reform can save lives. The Florida/Texas and Pennsylvania/Illinois pairings are good test cases. Prior to any carry reform, all four states had strong laws against carrying firearms; after the reform laws were enacted, the Florida and Pennsylvania systems were allowed to work so that large numbers of citizens acquired permits (As compared to Virginia, where some local officials refuse to implement the state's "shall issue" system.).[153]

150. Brian L. Withrow, The Effectiveness of Firearms Conceal Carry Laws on the Incidence and Pattern of Violent Crime (1993) (unpublished M. Pub. Admin. thesis, Southwest Texas State University).

151. *Id.* at 3, 38-39.

152. *Id.* at 43-73.

153. *See supra* notes 60-61, 63-64 and accompanying text.

The Oregon/Arizona pairing, however, is poorly chosen. Although Arizona did not have a "shall issue" concealed carry law at the time of the Withrow study (Arizona enacted a "shall issue" law in 1994), Arizona has always allowed adults to carry an *unconcealed* handgun without a permit.[154] Unlike in some other states where open carry is ostensibly legal such as Colorado and North Carolina,[155] open carry in Arizona has always been tolerated by the police, and is common, even in downtown Phoenix. Accordingly, the Oregon/Arizona pairing compares a state which moved from limited concealed carry to widespread concealed carry (Oregon) with a state that has always had limitless open carry (Arizona). Unlike the Florida/Texas and Pennsylvania/Illinois pairings, the Oregon/Arizona comparison does not contrast a state which changed its restricted carry policy—e.g., Florida and Pennsylvania—with a state which retained its restrictive policy—e.g., Texas and Illinois. Thus, the Oregon/Arizona results do not provide worthwhile information about the contrast between a restrictive and a "shall issue" carry policy, and may be appropriately discarded.

By contrast, the results of the Florida/Texas and Pennsylvania/Illinois comparisons legitimately provide strong support for the hypothesis that concealed carry reform reduces murder, weak support for reduction in aggravated assault and in robbery, and no support for a statistically noticeable reduction in rape. Significantly, the results in both pairings are identical.

TABLE 3: SUPPORT FOR HYPOTHESIS THAT CONCEALED CARRY REFORM REDUCES CRIME[156]

State Pairs	Murder	Aggravated Assault	Rape	Robbery
Florida/ Texas	support	weakly supports	does not support	weakly supports
Pennsylvania/ Illinois	supports	weakly supports	does not support	weakly supports
Oregon/ Arizona	does not support	supports	does not support	does not support

Recall that in the state-by-state analysis of homicide trends, Florida, a highly populous state with a major homicide problem, was the only state to

154. *See supra* notes 117 and accompanying text.

155. COLO. REV. STAT. ANN. § 18-12-105(1)(b) (West 1990 & Supp. 1994); N.C. GEN. STAT. § 14-269(a) (1993).

156. Withrow, *supra* note 150, at 75.

show a major change in its homicide rate after the enactment of concealed carry.[157] The Withrow data reinforces the tentative conclusion suggested by the raw Florida data: in a large state with a serious crime problem, concealed carry reform may have a significant life-saving effect. Withrow's research also suggests that carry reform could have a small but statistically significant effect in reducing aggravated assault and robbery.

In sum, three different approaches to studying the effects of concealed carry reform on crime rates have been presented: (1) a comparison of state homicide trends with national trends, (2) a comparison of crime rates among different counties with different carry policies in California, and (3) before and after crime rates as compared between Florida and Texas, and between Pennsylvania and Illinois. The results are consistent in all three studies. Concealed carry reform may reduce murder rates, at least in large, high-crime states. Concealed carry reform may also reduce aggravated assault and robbery rates. Perhaps most significantly, evidence does not suggest that concealed carry reform will cause a net increase in the homicide rate, or in any other crime rate. Despite the results in the many American states which have passed carry reform, the gun control lobbies persist in predicting a major increase in homicide whenever concealed carry reform is introduced. This continued effort must be attributed to the triumph of ghoulish hope over experience.

IV. Other Issues

The evidence presented thus far cannot guarantee that carry reform will significantly reduce a state's homicide rate. So why change the laws if they are not *clearly* going to reduce murder rates? Conversely, however, if carry reform does not present a clear threat to public safety, why not allow law-abiding citizens who have passed a background check for criminal behavior and mental stability to have the means to defend themselves most effectively? Also, because results of carry reform in states such as Florida suggest that carry reform has the potential to contribute to public safety, why not allow law-abiding citizens to make their own choice about carrying? Thus, this Part explores issues specifically related to that choice.

A. Saving Lives

Carry reform is no panacea for crime. However, the failure to enact carry reform can have deadly consequences. In October 1991 in Killeen, Texas, George Hennard rammed his pickup truck through the plate glass window of Luby's cafeteria. Using a pair of ordinary pistols, he murdered twenty-three people in ten minutes, stopping only when the police arrived. Dr. Suzanna Gratia, a cafeteria patron, had a gun in her car. In conformity

157. *See supra* subpart II.B.

to Texas law, however, the gun was not carried on her person; Texas, despite its Wild West image, was the first state in the nation to completely prohibit the carrying of handguns.[158] Carry reform legislation had almost passed the legislature, but had been stopped in the House Calendars Committee by the gun control lobby.[159]

A few months later, Dr. Gratia testified to the Missouri Legislature (concerning a concealed handgun permit law being considered in that state) that if she had been carrying her gun, she could have shot at Hennard:

> I know what a lot of people think, they think, "Oh, my God, then you would have had a gunfight and then more people would have been killed." Unhunh, no. I was down on the floor; this guy is standing up; everybody else is down on the floor. I had a perfect shot at him. It would have been clear. I had a place to prop my hand. The guy was not even aware of what we were doing. I'm not saying that I could have saved anybody in there, but I would have had a chance.[160]

Hennard reloaded five times and threw away one pistol because it jammed, so plenty of opportunity existed for someone to fire at him. Dr. Gratia may not have been able to kill or wound Hennard. Nonetheless, Hennard would at least have been forced to dodge hostile gunfire and would not have been able to methodically finish off his victims as they lay wounded on the floor. The hypothetical risks of a stray bullet from Dr. Gratia's gun would have been rather small compared to the actual risks of Hennard not facing any resistance. Because of the restrictive Texas law, Dr. Gratia was helpless as Hennard murdered both her parents.

Two months later, a pair of criminals with stolen pistols herded twenty customers and employees into the walk-in refrigerator of a Shoney's restaurant in Anniston, Alabama. A customer, Thomas Glenn Terry, was hiding under a table. Unlike Dr. Gratia, Terry was armed with the .45 semi-automatic pistol he carried legally under Alabama law. One of the robbers discovered Terry, but Terry killed him with five shots in the chest. The second robber, who had been holding the manager hostage, shot at Terry and grazed him. Terry returned fire, critically wounding the robber.[161] Twenty-three innocent people died in Killeen, Texas, where carrying a gun for self-defense was illegal. Twenty innocent lives were saved in Anniston, Alabama, where self-defense permits are legal.[162]

158. Cramer, *supra* note 2, at 113-19; Suzanna M. Gratia, *If I Had My Gun . . . .*, WASH. POST, Feb 27, 1993, at A21.

159. Telephone Interview with NRA official (Oct. 1991).

160. David B. Kopel, *Hold Your Fire*, POL'Y REV., Winter 1993, at 7.

161. J. Neil Schulman, *A Massacre We Didn't Hear About*, L.A. TIMES, Jan. 1, 1992, at B5.

162. Abraham Tennenbaum, *Handguns Could Help*, BALTIMORE MORNING SUN, Oct. 26, 1991, at 9A

After the Luby's incident, the Texas legislature once again debated carry reform. In an ironic reversal of gun control advocates' frequent efforts to use massacres as springboards for various gun prohibition measures, these same advocates insisted that public policy should not be based on isolated massacres. Control advocates would suggest that, although Dr. Gratia might have saved lives with her gun, more lives would be lost in the long run because of mistakes made by angry or incompetent citizens carrying guns. As the research above has indicated, such a prediction has poor factual support.

Mass murders in public places are rare. Nonetheless, the Anniston incident is not the only time a citizen armed with a gun has stopped a potential massacre. In 1986, a homeless Cuban refugee, armed with a "two-foot ornamental blade apparently purchased in Time Square," went on a rampage on the Staten Island Ferry. He killed two people and wounded nine others, but was subdued by a retired police officer at gunpoint.[163] In Las Vegas in July 1993, a man with a shotgun screamed, "I'm sick of this, and I'm not going to take it any more," and then opened fire in a state disability insurance office. He jumped into his truck and began driving wildly through the building. A security guard shot him in the head.[164]

One could possibly argue that the above two cases are distinguishable because a retired police officer just happened to be present at fortuitous times. Unfortunately, not every mass-murderer makes the mistake of picking crowd that includes a retired police officer or a security guard. Nevertheless, assuming proper training and a background check, if the average citizen can use a gun and pose no more danger to society than does a former police officer or a security guard with a gun (as will be demonstrated below), then expanding the number of licensed, trained people who are allowed to carry firearms will commensurately reduce the potential for carnage by psychotic killers.

In Israel, a permit to own a handgun (which is granted to every law-abiding citizen) is equivalent to a carry permit. In April 1984, three terrorists opened fire with automatic rifles and began throwing hand grenades at the busiest intersection in West Jerusalem. As the *Los Angeles Times* reported, "One of the attackers was killed in a hail of answering fire from the owners and customers of nearby shops."[165] A wild firefight broke out between the Israelis and the two remaining terrorists until the police arrived and captured the terrorists. During the chaotic and flurried exchange of bullets, some of the Israelis were possibly wounded by

163. Robert D. McFadden, *Man with a Sword Kills 2 and Wounds 9 on Staten Island Ferry*, N.Y. TIMES, July 8, 1986, at A1. The retired officer carried a gun for a part-time job as a security guard. *Id.*

164. *Man Shoots Up Disability Office*, L.A. TIMES, July 9, 1993, at A22.

165. Norman Kempster, *48 Wounded in Terrorist Attack in Jerusalem*, L.A. TIMES, Apr. 3, 1984, at 1, 19.

"friendly fire."[166] When the shooting stopped, however, the only death was that of a terrorist. The next day, the surviving terrorists were presented to the media. They explained their foiled plan to machine-gun a succession of crowded areas, fleeing before the police arrived. One terrorist complained indignantly that his bosses had not told him that Israeli citizens carry guns.[167]

Now contrast the opposite results of two otherwise similar incidents. In November 1993, a lone gunman shot twenty-two unarmed, innocent victims on the Long Island Railroad. Four months later, a terrorist group intent on sabotaging the new peace accord between Israel and the Palestinians, attempted to perpetrate a mass murder of people using public transportation in Israel. The Associated Press reports:

> A Palestinian opened fire with a submachine gun at a bus stop near the port of Ashod today, killing one Israeli and wounding four before being shot to death by bystanders . . . . National police spokesman Erich Bar-Chen said today's attacker, who was armed with an Uzi submachine guns, was shot and killed by a civilian and a soldier who were at the bus stop and hitchhiking post used by soldiers. Ashod is 15 miles south of Tel Aviv and 15 miles north of the Gaza Strip.[168]

At the very least, carry permits for licensed, trained citizens clearly have saved lives when madmen or terrorists have attempted mass murder in public places. Accordingly, opponents of carry licenses must bear the burden of demonstrating that the number of lives lost from the issuance of carry licenses will outweigh the lives saved during attempted massacres. As detailed above, opponents of carry reform cannot carry their burden of proof. Evidence does not suggest that carry reform will cause any increase in murder, let alone an increase so large as to outweigh the significant number of lives that could be saved by allowing people like Dr. Suzanna Gratia to help protect the public.

B. Peace of Mind

Another important benefit to be derived from properly licensed, trained, and armed citizens is peace of mind. By way of analogy, many people choose to buy automobiles with passenger-side air bags or other safety features. Many people also choose to use the seat belts in a car. Of course, the odds are small that on any given automobile trip there will be an accident in which the safety belt or other safety device will serve its ultimate purpose. Similarly, the odds are small that a person who goes out

166. *Id.*

167. Don B. Kates, Jr., *Firearms and Violence: Old Premises, New Research*, *in* 1 VIOLENCE IN AMERICA 209 (Ted R. Gurr ed., 1989).

168. AP, Apr. 7, 1994, *reprinted in* MARIN INDEPENDENT JOURNAL, at A3.

in public will be attacked by a criminal on any given day. But even on days when drivers are not struck by other cars, the car's safety devices confer a genuine benefit because the drivers feel safer. Likewise, if people feel safer because they carry a gun and in turn lead happier lives because they feel safer and more secure, then the carrying of guns makes a direct and nontrivial contribution to their overall quality of life.[169] If women feel safer walking at night because they can carry a firearm, then the firearm makes a tangible contribution to a better society, whether or not a statistically significant drop in the crime rate results.

Of course, the increased peace of mind that results from people knowing they will be able to protect themselves would not be ultimately beneficial if the increased carrying of firearms actually caused more criminal violence. As the data presented above indicate, however, allowing licensed, trained citizens to carry firearms for protection does not appear to cause more gun crime.

C. *The Morality of Defensive Firearms*

1. Taking the Law into One's Hands

The use of firearms for lawful self-defense by licensed, trained citizens is sometimes decried as "taking the law into one's hands." In a legal sense, however, the use of armed force for self-defense is not "taking the law into one's hands." Using deadly force or the threat thereof to defend against a violent felony is legal in all fifty states. American law unanimously authorizes deadly force whenever no lesser force will suffice—not merely against attempted murder, but also to thwart violent felonies such as rape.[170] Many circumstances therefore legally justify exercising the choice to use force for self-defense or defense of another. Accordingly, using such force cannot be "taking the law into one's hands" any more than exercising other lawful choices, such as signing a contract. Moreover, every American state recognizes the right of citizens to arrest a person committing a violent felony in their presence.

Thus, more accurately speaking, when criminals violate the law and use force, they truly take the law into their own hands. When law-abiding citizens react by using or threatening force to stop the law-breaking act, they are merely taking the law *back* from the criminals, *restoring* the law to its rightful owners—law-abiding citizens.

169. James D. Wright, *The Ownership of Firearms for Reasons of Self Defense*, *in* FIREARMS AND VIOLENCE 327 (Don B. Kates, Jr. ed., 1984).

170. Don B. Kates, Jr. & Nancy J. Engberg, *Deadly Force Self-Defense Against Rape*, 15 U.C. DAVIS L. REV. 873, 877-80 (1982).

2. Violence Begets Violence

Some may assert that carrying or using a gun for protection is immoral, or that "violence begets violence." For example, author Betty Friedan argues "that lethal violence even in self-defense only engenders more violence."[171]

Ms. Friedan's remark implies that a woman who shoots a homicidal rapist should be condemned for engendering violence, rather than be commended for preventing even worse violence. According to Ms. Friedan's logic, victims of murderous assault should forgo violence and rather rely, post-mortem, on the police to arrest the murderer. Although pacifism may have its adherents, the American legal system is not among them. As criminal law scholar Herbert Weschler observed, the right of crime victims to use deadly force is based on what Weschler called the "universal judgment that there is no social interest in preserving the lives of aggressors at the cost of those of their victims."[172]

The American people overwhelmingly believe in the moral legitimacy of the use of deadly force against criminal attack. A 1985 Gallup survey asked, "If the situation arose, would you use deadly force against another person in self-defense?" Only thirteen percent said "no." Presumably, some were expressing their own preference, but still would not felonize persons who chose differently.[173]

After Bernhard Goetz shot four teenagers who were attempting to rob him on a Manhattan subway in 1984, a *Newsweek* poll asked the following question: "Do you feel that taking the law into one's own hands, often called vigilantism, is justified by circumstances?"[174] Intentionally or not, the question was phrased in a way that was quite prejudicial to self-defense; "vigilantism" has nothing to do with self-defense, but instead refers to extra-judicial punishment of a suspect by a mob.[175] The question was asked in two separate surveys. In one group, twenty-three percent said violence was never justified; in the other survey, seventeen percent so opined.[176]

171. Ann Japenga, *Would I Be Safer With a Gun?*, HEALTH, March/April 1994, at 54.

172. Herbert Wechsler & Jerome Michael, *A Rationale of the Law of Homicide I*, 27 COLUM. L. REV. 701, 736 (1937).

173. Tom Morganthal et al., *A Goetz Backlash?*, NEWSWEEK, Mar. 11, 1985, at 53

174. *Id.*

175. Richard M. Brown, *The American Vigilante Tradition*, *in* THE HISTORY OF VIOLENCE IN AMERICA: HISTORICAL AND CONTEMPORARY PERSPECTIVES 154-217 (Hugh D. Graham & Ted R. Gurr eds., 1969).

176. Morganthal et al., *supra* note 173, at 53. New York Governor Mario Cuomo stated, however, that "[i]f this man was defending himself against attack with reasonable force, he could be legally [justified, but] not morally . . . ." *"Deathwish" Vigilante*, NEWSWEEK, Jan. 7, 1985, at 10.

Plainly then, the very large majority of the American people believe that use of force, including deadly force if necessary, is a legitimate response to dangerous criminal attacks. In a society that respects liberty of conscience, this large majority should not attempt to force its morality of lawful self-defense onto the minority of the population that would prefer not to use such force. At the same time, the pacifist minority should not attempt to force its morality onto the majority that approves of otherwise lawful, defensive force.

3. Religion

Whenever legislative bodies debate concealed carry laws, representatives of organizations such as the National Council of Churches commonly show up and announce the "moral" opposition to concealed carry on behalf of "the religious community." Nonetheless, reflexive hostility to the lawful use of force for legitimate defense is hardly the only moral position a sincerely religious person may hold.[177]

The *Book of Exodus* specifically absolves a homeowner who kills a burglar under certain circumstances.[178] The Sixth Commandment, "Thou shalt not kill," refers to murder only, and does not prohibit the taking of life under any circumstances; notably, the law of Sinai specifically requires capital punishment for a large number of offenses.[179] Earlier in *The Bible*, Abram, the father of the Hebrew nation, learns that his nephew Lot has been taken captive. Abram (whom God later renames "Abraham") immediately calls out his trained servants, sets out on a rescue mission, finds his nephew's captors, and attacks and routs those captors, thereby rescuing Lot.[180] *The Bible* presents Abram's violent rescue of an innocent captive as the morally appropriate and necessary choice.

Gun prohibitionists who look to *The Bible* for support cannot find specific interdictions of weapons, but rather point to general passages about peace and love. They cite such verses as "Do not resist an evil person. If someone strikes you on the right cheek, turn to him the other also";[181]

177. For a thorough discussion of the issue, see BRENDAN FURNISH & DWIGHT SMALL, THE MOUNTING THREAT OF HOME INTRUDERS: WEIGHING THE MORAL OPTION OF ARMED SELF-DEFENSE (1993).

178. *Exodus* 22:2 (NIV) ("If the thief is caught while breaking in and is struck so that he dies, the defender is not guilty of bloodshed."). The next verse continues, "[B]ut if it happens after sunrise, he is guilty of bloodshed. 'A thief must certainly make restitution, but if he has nothing, he must be sold to pay for his theft.'" *Id.* 22:3.

179. *Id.* 21-22.

180. *Id.* 14.

181. *Matthew* 5:39.

"Love your enemies and pray for those who persecute you";[182] and "Do not repay anyone evil for evil."[183]

None of these exhortations take place in the context of an imminent threat to life. A slap on the cheek is a blow to pride, but not a threat to life. Reverend Anthony Winfield, author of a study of Biblical attitudes towards weapons, suggests these verses command the faithful not to seek revenge for evil acts and not to bear grudges against persons who have done them wrong. He cites *Romans* 12:18, "If it is possible, as far as it depends on you, live in peace with everyone," as showing an awareness that in extreme situations, one may find it impossible to live in peace.[184]

The preaching of John the Baptist and Peter, both of whom converted soldiers, further evidences that the New Testament does not command universal pacifism. Neither John nor Peter demanded that the soldiers lay down their arms or find another job.[185] John instructed the soldiers, "Don't extort money and don't accuse people falsely," just as he instructed tax collectors, "Don't collect any more than you are required to."[186] John plainly implies that being a soldier or a tax collector is not itself wrong, so long as the inherent power of these positions is not used for selfish or improper purposes.

Of course, many gun prohibitionists would approve of soldiers carrying and using weapons when necessary. But if—as the New Testament strongly implies—a person may be both a good soldier and a good Christian, then one cannot claim *The Bible* always forbids the use of violence, no matter what the purpose. The conversions of the soldiers support Winfield's thesis that general "peace and love" passages are not blanket prohibitions on the use of force in all circumstances.[187]

The Bible's approving attitude towards the bearing of arms is not confined to professional soldiers. At the Last Supper, Jesus begins his final instructions to the apostles before his death:

> "When I sent you without purse, bag or sandals, did you lack anything?"
> "Nothing," they answered.
> [Jesus] said to them, "But now if you have a purse, take it, and also a bag; and if you don't have a sword, sell your cloak and buy one. . . . [W]hat is written about me is reaching its fulfillment."[188]

The disciples then announced, "See Lord, here are two swords." Jesus replied, "That is enough."[189] Even if the passage is read with absolute

182. *Id.* 5:44.

183. *Romans* 12:17.

184. REV. ANTHONY L. WINFIELD, SELF-DEFENSE AND THE BIBLE 28-32 (1991).

185. *Luke* 3:14; *Acts* 10:22-48.

186. *Luke* 3:13-14.

187. *See supra* note 184 and accompanying text.

188. *Luke* 22:35-37.

189. *Id.* 22:38.

literalness, Jesus was no more commanding that every apostle *must* carry a sword than was he commanding them to carry a purse or a bag. For the eleven,[190] two swords were sufficient or "enough."

More importantly, Jesus may not have been issuing an actual command that anybody carry swords, or purses, or bags. Jesus was making the broader, metaphorical point that after he was gone, the apostles would have to take care of their own worldly needs to some degree. The purse (generally used for money), the bag (generally used for clothing and food), and the sword (generally used for protection) are all examples of tools used to take care of such needs. When the apostles took Jesus too literally and started showing him their swords, Jesus, possibly frustrated that they missed the metaphor, ended the discussion.

Even when reduced to metaphor, however, the passage still contradicts the rigid pacifist viewpoint. In the metaphor, the sword, like the purse or the bag, is treated as an ordinary item for any person to carry. If weapons and defensive violence were illegitimate under all circumstances, Jesus would not have instructed the eleven to carry swords, even in metaphor, any more than Jesus would have created metaphors suggesting that people carry demonic statues for protection, or that they metaphorically rape, rob, and murder.

A few hours later, when soldiers arrived to arrest Jesus, Peter sliced off the ear of one of their leaders. Jesus healed the ear and then commanded, "No more of this,"[191] or "Put your sword away,"[192] or "Put your sword back in its place, for all who draw the sword will die by the sword."[193]

190. Judas Iscariot had already left to meet with those who would arrest Jesus. *John* 13:27.

191. *Luke* 22:49-51.

192. *John* 18:11.

193. *Matthew* 26:52. The quotation is sometimes rendered, "He who lives by the sword will die by the sword."

Biblical scholar John Spong suggests that the sword incident in the Garden of Gethsemane never happened. He notes that *The Gospel According to Mark*, generally agreed to be the oldest of the four gospels, mentions no such incident. As the gospels proceed chronologically in order of composition from *Matthew* to *Luke* to *John*, the garden confrontation is introduced and then additional details are added. Spong notes the considerable textual evidence that when Jesus was arrested, the disciples panicked and fled, and did not regain their courage until after Easter. Spong suggests that the story of the disciples confronting the Roman soldiers was an invention of the later gospel authors (or their sources) who simply would not accept the humiliation of the disciples' apparent, if temporary, cowardice. JOHN S. SPONG, RESURRECTION: MYTH OR REALITY? 224-25 (1994). Spong subscribes to the "reality" side of the question posed by his book's title, although he finds considerable myth in many of the details and argues that a significant number of stories in the gospels are not intended as literal history.

Jesus then rebuked the soldiers for "com[ing] out with swords and clubs," for Jesus was not "leading a rebellion."[194]

The most immediate meaning of these passages is that Jesus was preventing interference with God's plan for the arrest and trial.[195] Additionally, Jesus was instructing the eleven not to begin an armed revolt against the local monarchy or the Roman imperialists. Jesus had already refused the Zealots' urging to lead a war of national liberation.

Do the passages also suggest a general prohibition against drawing swords or other weapons for defense? Luke and John's versions of the story do not indicate such a prohibition, but the version in *Matthew* could be so read.

If *Matthew* is analyzed along the lines of "He who lives by the sword will die by the sword," the passage is an admonition that a person who centers his life on violence (such as a gang member) will likely perish. On the other hand, a translation of "all who draw the sword will die by the sword" could be read as a general rule against armed violence in any situation.

Most theologians would concur that the best way to understand *The Bible* is not to look at passages in isolation, but rather to carefully study passages in the context of the rest of *The Bible*. If the single line in *Matthew* were interpreted to mean that to draw the sword is always wrong, then it would be difficult to account for other passages which suggest that drawing a sword as a soldier (or carrying a sword as an apostle) is neither inappropriate nor prohibited. Viewed in the context of the rest of *The Bible*, this passage in *Matthew* is a warning against violence as a way of life, rather than as a complete ban on defensive violence in all situations.

The Vatican's Pontifical Council for Justice and Peace recently surmised, "In a world marked by evil and sin, the right of legitimate defense by armed means exists. This right can become a serious duty for those who are responsible for the lives of others, for the common good of the family or of the civil community."[196]

The Catholic Church recognizes people as saints because, among other reasons, the lives of saints are considered to be worthy of study and emulation. February 27 is the feast day of Saint Gabriel Possenti. According to *The One Year Book of Saints*, as a young man in nineteenth-century Italy, Francesco Possenti was known as the best dresser in town, as

194. *Matthew* 26:55; *Mark* 14:48; *Luke* 22:52.

195. After telling Peter to put his sword away, Jesus rhetorically asks, "Shall I not drink the cup the Father has given me?" *John* 18:11. *See also Matthew* 26:53.

196. PONTIFICAL COUNCIL FOR JUSTICE AND PEACE, THE INTERNATIONAL ARMS TRADE: AN ETHICAL REFLECTION 12 (1994). The document notes that "the right" to armed defense "is coupled with the duty to do all possible to reduce to a minimum, and indeed eliminate, the causes of violence." *Id.*

a "superb horseman," and as "an excellent marksman."[197] The young Possenti was also a consummate partygoer, who was engaged to two women at the same time. Twice during school he fell desperately ill, promised to give his life to God if he recovered, and then forgot his promise. One day at church, Possenti saw a banner of Mary. He felt that her eyes looked directly at him, and he heard the words "Keep your promise." As a result of his vision, Possenti immediately joined an order of monks, taking the name Brother Gabriel.[198]

Saint Gabriel Possenti is primarily remembered for the following incident:

> On a summer day a little over a hundred years ago, a slim figure in a black cassock [Possenti] stood facing a gang of mercenaries in a small town in Piedmont, Italy. He had just disarmed one of the soldiers who was attacking a young girl, had faced the rest of the band fearlessly, then drove them all out of the village at the point of a gun. . . . [W]hen Garibaldi's mercenaries swept down through Italy ravaging villages, Brother Gabriel showed the kind of man he was by confronting them, astonishing them with his marksmanship, and saving the small village where his monastery was located.[199]

Saint Gabriel Possenti displayed his "astonishing marksmanship" after having disarmed the soldier. The mercenaries' leader told Possenti that it would take more than just one monk with a handgun to make the mercenaries leave town. Possenti pointed to a lizard that was running across the road. He then shot the lizard through the head. The mercenaries immediately decided that discretion was the better part of valor, and fled the village.

Jewish law draws the same conclusion as the Vatican Pontifical Council: "If someone comes to kill you, rise up and kill him first."[200] Bystanders are likewise required to kill persons who are attempting rape.[201] Although Jewish law imposes a duty of self-defense, the duty to defend others takes precedence.[202]

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197. REV. CLIFFORD STEVENS, THE ONE YEAR BOOK OF SAINTS 66 (1989).

198. *Id.*

199. *Id.*

200. *Babylonian Talmud, Sanhedrin* 72a. The context of this passage is a discussion of the protection of one's property. The passage is a direct response to the offending thief having reasoned, "If I go there, he [the owner] will oppose me and prevent me; but if he does, I will kill him." *Id.*

201. *Id.* 73a.

202. For excellent discussions of Jewish law and the duty to use force, see George P. Fletcher, *Defensive Force as an Act of Rescue*, SOC. PHIL. AND POL'Y, Spring 1990, at 170, and George P. Fletcher, *Self-Defense as a Justification for Punishment*, 12 CARDOZO L. REV. 859 (1991).

The view that forcible resistance to evil attack is itself evil presents serious implications. According to this logic, Patrick Henry and the other founding fathers were wrong to urge armed resistance against the British Redcoats; the Jews who led the Warsaw Ghetto revolt against Hitler were immoral; Jeffrey Dahmer's victims would have been wrong to use a weapon to protect themselves; Saint Gabriel Possenti was a paragon of evil; Abraham should not have rescued his kidnapped nephew; and police officers who fire their guns to protect innocent people are sinful.

Consider the following situation. A mother in a rough Los Angeles neighborhood is confronted with an escaped psychopathic murderer who has broken into her house. The woman has good reason to fear that the intruder is about to slaughter her three children. If she does not shoot him with her .38 special, the children will most likely be dead before the police can arrive. Is the woman morally obligated to simply murmur "violence engenders violence," keep her handgun in the drawer, and watch her children die? Or, is the mother rather morally *obligated* to save her children by using her gun to stop the intruder?

The view that life is a gift from God and that permitting the wanton destruction of one's own life (or the life of a person under one's care) amounts to hubris is hardly new. As stated in a 1747 sermon in Philadelphia:

> He that suffers his life to be taken from him by one that hath no authority for that purpose, when he might preserve it by defense, incurs the Guilt of self murder since God hath enjoined him to seek the continuance of his life, and Nature itself teaches every creature to defend [it]self.[203]

Whatever their disagreements on other matters, the natural rights philosophers who provided the intellectual foundation of the American Revolution collectively viewed self-defense as "the primary law of nature," from which many other legal principles could be deduced.[204]

As the great Justice Louis Brandeis proclaimed: "We shall have lost something vital and beyond price on the day when the state denies us the right to resort to force in defense of a just cause."[205]

Leading criminal law scholars have emphasized a different, less philosophical point: Victims protect the entire community when they kill a

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203. C. Ashley, The Right to Keep and Bear Arms in America: The Origins and Application of the Second Amendment to the Constitution 39-40 (1974) (unpublished Ph.D. dissertation in history, University of Michigan) (available at U. of Mich. Graduate Library), *quoted in* Don B. Kates, Jr., *Handgun Prohibition and the Original Meaning of the Second Amendment*, 82 MICH. L. REV. 204, 230 (1982).

204. 3 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND *4 (also asserting that the right was inalienable); THOMAS HOBBES, LEVIATHAN 88, 95 (1964) (su[illegible] a covenant against self-defense is void); 2 MONTESQUIEU, SPIRIT OF THE LAWS 64 ("Who does not see that self-defense is a duty superior to every precept?").

205. THE BRANDEIS GUIDE TO THE MODERN WORLD 212 (Alfred Lief ed., 1941).

dangerous criminal rather than leaving that criminal free to prey on others. To theorists such as Bishop and Pollock, "sudden and strong resistance to unrighteous attack is not merely to be tolerated," not merely "a necessary evil," but "a just and perfect" right.[206] A good citizen attacked thus has "a moral duty" to use all force necessary to apprehend or otherwise incapacitate criminals rather than to submit or retreat.

The assertion that use of force to defend innocent life is immoral necessarily presumes that persons who use such force are "selfish." To the extent that social science can shed any light on this presumption, the presumption of selfishness is unfounded. A study of "Good Samaritans" who came to aid of victims of violent crime found that eighty-one percent "own guns, and some carry them in their cars. They are familiar with violence, feel competent to handle it, and don't believe they will be hurt if they get involved."[207] Are these people thus inferior moral beings who "engender violence"?

Regardless of one's response to the above question, as a moral or practical matter, one may claim that a crime victim should rely on the government for protection *only if* the government has an obligation to protect the victim. Under United States law, the government quite clearly has no such obligation.

D. The Absence of a Legal Government Obligation to Protect Citizens

It is well-settled law that police in the United States have no legal duty to protect any individual citizen from crime, even if the citizen has received death threats and the police have negligently failed to provide protection.[208] For example, the New York Court of Appeals explicated the rule

206. F. POLLOCK, TREATISE ON THE LAW OF TORTS 123 (15th ed. 1951); ROLLIN M. PERKINS, CRIMINAL LAW 997-1004 (2d ed. 1969) (describing view of Bishop).

207. Ted L. Huston et al., *The Angry Samaritans*, PSYCHOL. TODAY, June 1976, at 64. The study does suggest, however, that anger toward criminals may be the motivation behind the actions of a "samaritan" rather than concern for a victim. *Id.*

208. *See, e.g.*, CAL. GOV'T CODE §§ 845-846 (West Supp. 1994) (no liability for failure to arrest or to retain arrested person in custody); Bowers v. DeVito 686 F.2d 616 (7th Cir. 1982) (no federal constitutional requirement that police provide protection); Calogrides v. City of Mobile, 475 So. 2d 560 (Ala. 1985); Davidson v. City of Westminster, 649 P.2d 894 (Cal. 1982); Stone v. State, 165 Cal. Rptr. 339 (1980); Warren v. District of Columbia, 444 A.2d 1 (D.C. 1981); Sapp v. City of Tallahassee, 348 So. 2d 363 (Fla. Dist. Ct. App.), *cert. denied* 354 So. 2d 985 (Fla. 1977); Jamison v. City of Chicago, 363 N.E.2d 87 (Ill. App. Ct. 1977); Keane v. City of Chicago, 240 N.E.2d 321 (Ill. App. Ct. 1968); Simpson's Food Fair, Inc. v. City of Evansville, 272 N.E.2d 871 (Ind. Ct. App. 1971); Silver v. City of Minneapolis, 170 N.W.2d 206 (Minn. 1969); Wuethrich v. Delia, 382 A.2d 929, 930 (N.J. Super. Ct. App. Div.), *cert. denied* 391 A.2d 500 (1978); Chapman v. City of Philadelphia, 434 A.2d 753 (Pa. Super. Ct. 1981); Morris v. Musser, 478 A.2d 937 (Pa. Comm'n Ct. 1984).

in Riss *v. City of New York*:[209] The government is not liable even for a grossly negligent failure to protect a crime victim. In *Riss*, a young woman telephoned the police and begged for help because her ex-boyfriend had repeatedly threatened, "If I can't have you, no one else will have you, and when I get through with you, no-one else will want you." The next day, the ex-boyfriend threw lye in her face, blinding her in one eye, severely damaging the other, and permanently scarring her features. "What makes the City's position particularly difficult to understand," wrote a dissenting judge, "is that, in conformity to the dictates of the law, Linda did not carry any weapon for self-defense. Thus, by a rather bitter irony she was required to rely for protection on the City of New York which now denies all responsibility to her."[210]

In *Warren v. District of Columbia*,[211] two women were upstairs when they heard their roommate being attacked by men who had broken in downstairs. They immediately telephoned the police for assistance. Crawling from their window onto an adjoining roof, they saw police arrive and then leave without entering the house. The two women went back inside and again heard screams. They called the police a second time. Their roommate's screams having ceased, they assumed the police must have arrived and taken care of the situation. Actually, their second call was somehow never dispatched. The women called out to their roommate and alerted the attackers of their presence. As the court's opinion graphically describes: "For the next fourteen hours [all three] women were held captive, raped, robbed, beaten, forced to commit sexual acts upon each other, and made to submit to the sexual demands" of their attackers.[212]

The roommates later sued the District of Columbia for ignoring their phone call for help. The District of Columbia's highest court exonerated the District and its police, concluding it is "a fundamental principle of American law that a government and its agents are under no general duty to provide public services, such as police protection, to any individual citizen."[213]

Given the doctrine of police immunity, the contention that trained citizens should not be allowed to carry firearms in order to protect

Ruth Brunell called the police on 20 different occasions, begging for protection from her husband. He was arrested only one time. Mr. Brunell telephoned his wife one evening and told her that he was coming over to kill her. When she called the police, they refused her request for protection, telling her to call back when he got there. Mr. Brunell stabbed his wife to death before she could call the police. The court held that the San Jose police were not liable for ignoring Mrs. Brunell's pleas for help. Hartzler v. City of San Jose, 120 Cal. Rptr. 5 (Cal. Ct. App. 1975).

209. 240 N.E.2d 860 (N.Y. 1968).

210. *Id.* at 862 (Keating, J., dissenting).

211. 444 A.2d 1 (D.C. 1981).

212. *Id.* at 2.

213. *Id.* at 6.

themselves would appear untenable. At the very least, in cases where the government affirmatively interferes with a person's ability to protect, government immunity from lawsuit should be waived. If a person passes a background check and a safety class, and is then denied a firearms carry permit because the police administration does not believe that citizens should carry guns, government legal immunity should not apply if that person is subsequently injured by a criminal. The government should not be able to take away person's right of self-defense, and then assert that it has no responsibility for the consequences. If the person is killed because the police failed to act, the survivors should have the right to sue.[214]

Some police administrators and politicians use legal immunity to disclaim government responsibility to protect ordinary people, but these same officials hypocritically carry guns and work in buildings protected by government-issue police bodyguards. In addition, they generally live in relatively safe areas. Yet these same officials use overly restrictive handgun carry laws to prevent from ordinary citizens from protecting themselves.

Judge David Shields, who sits on Chicago's special "gun court," explained to Congress the kinds of persons who came before his court for failing to possess a handgun carry permit (impossible to obtain in Chicago, except for the politically connected):

> For most, this is their first arrest of any kind. I don't mean now that this is their first conviction, but I mean this is their very first arrest of any kind, and many of them are old people. Many of them are shopkeepers, persons who have been previous victims of violent crimes.
>
> . . . .
>
> I think most of the defendants who come to court believe that they need a gun to protect themselves in the community, and I have one statement that was made by an elderly defendant that I think summed up the attitude of such people. When he responded, he said, "I would much rather be caught by the police with a gun than to be caught out on the street in my neighborhood without a gun."
>
> And I didn't think that when that remark was made that he was in any way capricious or arbitrary with the court. I think that was his sincere belief. I think the courts and probably most members of this committee aren't really exposed to the problems of the ghetto community and it is probably fair to say that most of us aren't likely to voluntarily go into those communities except under the most optimum circumstances; meaning broad daylight and certainly not alone or at night or on foot.[215]

214. Precedent for such a conclusion could be based on Chambers-Castanes v. King County, 669 P.2d 451 (Wash. 1983) (en banc), which upheld an exception to the immunity principle when some form of privity is found between police and specific victims, and when the victims are dissuaded from taking steps to protect themselves because when they relied on specific police assurances that help was on its way.

215. *Firearms Legislation, 1975: Hearings on H. 521-38 Before the Subcomm. on Crime of the House Comm. on the Judiciary*, 94th Cong., 1st Sess. 587 (1975).

E. Can Citizens Use Guns Competently?

Whenever and wherever the concealed carry issue is raised in the future, objections will undoubtedly be raised by reform opponents, including many law enforcement professionals who claim expertise on the issue. These opponents predict that ordinary people, even if they have passed a firearms safety class, cannot be trusted to use guns competently. Supposedly, the guns will be taken away by criminals, or the gun-owners will shoot an innocent bystander by mistake.

The existing body of research provides no support for these fears. The best evidence as to what happens when people have carry permits is the experience of the many American states that issue such permits routinely. From these states, the most detailed data are those compiled by the Dade County (Miami) police.[216] As discussed in subpart II. B., the police kept track of every known incident involving the county's more than 21,000 handgun carry permitees over a six-year period. In that six-year period, only one known incident of a crime victim having his gun taken away by the criminal was reported. No known incidents of a crime victim injuring an innocent person by mistake were reported. Although the handgun permit holder was not always successful in preventing a crime, no innocent person was injured as a result of a mistake by a permit-holder.

Another study examined newspaper reports of gun incidents in Missouri that involved both police and civilians. Civilians were successful in wounding, driving off, or capturing criminals eighty-three percent of the time, compared with a sixty-eight percent success rate for the police. Civilians intervening in crime were slightly less likely to be wounded than were police. Only two percent of shootings by civilians, compared to eleven percent of shootings by police, involved the shooting of an innocent person mistakenly thought to be a criminal.[217]

The Missouri research does *not* prove that civilians are more competent than police in armed confrontations. Civilians can often choose whether or not to intervene in a crime in progress, whereas police officers are required to intervene. Accordingly, police officers quite naturally have a lower success rate and make more mistakes. Attorney Jeffrey Snyder elaborates:

> Rape, robbery, and attempted murder are not typically actions rife with ambiguity or subtlety, requiring special powers of observation and great book-learning to discern. When a man pulls a knife on a woman and says, "You're coming with me," her judgment that a crime is being committed is not likely to be in error. There is little chance that she is going to shoot the wrong person. It is the police, because they are rarely at the scene of the crime when it occurs, who are more likely to find themselves in

216. *See supra* notes 50-53 and accompanying text.

217. Silver & Kates, *supra* note 20, at 139-70.

circumstances where guilt and innocence are not so clear-cut, and in which the probability for mistakes is higher.[218]

In addition, the Missouri study was not restricted to "carry" situations, but also included self-defense in the home. Persons using a gun to defend their own home, who know its layout much better than does an intruder, might be expected to have a higher success rate than would persons using a gun in a less familiar public setting.

Professor Gary Kleck, a member of the ACLU and Common Cause, has compiled the most detailed information about civilian defensive gun use in his book *Point Blank: Guns and Violence in America*. In 1992, the American Society of Criminology awarded the book the Hindelang Prize, as the most significant contribution to criminology in the previous three years. In *Point Blank*, Kleck presents his study of computer tapes from the United States Department of Justice's National Crime Survey, for the years 1979-85. Analyzing the data from over 180,000 crime incidents in the National Crime Survey, as well as from other studies, Kleck found the following:

- In no more than one percent of defensive gun uses was the gun taken away by a criminal.
- The odds of a defensive gun user accidentally killing an innocent person are less than 1 in 26,000.
- For robbery and assault victims, the lowest injury rates were among victims who resisted with a gun (17.4% for robberies, and 12.1% for assaults).
- The next lowest injury rates were among persons who did not resist. Other forms of resistance such as shouting for help or using a knife, had higher injury rates than either passive compliance or resistance with a gun.[219]

Significantly, the above data do not separate defensive home use (where victim success rates would be expected to be higher) from use in public areas. Still, taken as a whole, the National Crime Survey data, like the Missouri data,[220] suggest that uniformed government employees are not the only class of people who can use a firearm successfully to defend self and others.

F. The Wild West, or "What If Everyone Carried a Handgun?"

Persons opposed to carry reform sometimes state that allowing licensed, trained citizens to carry guns would make modern America like the Wild

218. Jeffrey R. Snyder, *A Nation of Cowards*, THE PUB. INTEREST, Fall 1993, at 40, 50.

219. GARY KLECK, POINT BLANK: GUNS AND VIOLENCE IN AMERICA 120-26 (1991).

220. *See supra* note 217 and accompanying text.

West. A shorthand version of this statement is simply to raise the rhetorical question: "What if everyone carried a gun?"

Asking a question such as "What if everyone did X?" contributes to a debate only if a realistic possibility exists that everyone might actually do *X*. What if everyone had fifteen children? What if everyone remained celibate?[221] Universal celibacy would destroy the human race in one generation, whereas the universal bearing of fifteen children per family could cause huge social and environmental problems. If "What if" questions guided public policy, then it would be logical to enact a law requiring every family to have exactly two children, thus preventing the horrible potential consequences of universal celibacy or universal over-fecundity. In the real world, however, some people choose to be celibate, and some people choose to have fifteen children. Most people choose something between these extremes, resulting in a reasonable population growth rate without the need of government regulation.

In the real world, the question "What if everyone carried a gun?" is as meaningless as the question "What if everyone tried to park at the state capitol at the same time?" The research presented throughout this Article demonstrates that no more than four percent of a state's population is likely to choose to obtain a handgun carry permit.[222] If the "What if" question does have any relevance, such can best be found by looking at the most recent era in American history when everyone really did carry a gun.

Late twentieth-century Americans have an image of the "Wild West" that is based primarily on television and the movies. In contrast, historian Roger McGrath set out to study the West in detail in order to determine how violent it really was. In *Gunfighters, Highwaymen, & Vigilantes*, McGrath examines the nineteenth-century Sierra Nevada mining towns of Aurora and Bodie.[223]

Aurora and Bodie certainly had more potential for violence than most other places in the West. The population was mainly young, transient males who recognized few social controls. There was one saloon for every twenty-five men; brothels and gambling houses were also common. "Sobriety was thought proper only for Sunday school teachers and women," McGrath observes.[224] Governmental law enforcement was ineffectual, and sometimes the sheriff doubled as the head of a criminal gang. Nearly everyone carried a gun.[225]

The homicide rate in these towns was extremely high, as the "bad men" who hung out in saloons shot each other at a fearsome rate, in some cases

221. Blackman, *supra* note 18, at 29.

222. *See supra* Part II.

223. ROGER D. MCGRATH, GUNFIGHTERS, HIGHWAYMEN, & VIGILANTES: VIOLENCE ON THE FRONTIER (1984).

224. *Id.* at 255.

225. *Id.* at 250.

exceeding the homicide rate in modern Washington, D.C.[226] These shootings amounted to consensual violence among disreputable young men who enjoyed getting drunk and getting into fights. The presence of guns thus turned many petty drunken quarrels into fatalities.[227]

Other crime in Aurora and Bodie, however, was virtually nil. The per capita annual robbery rate was seven percent of modern New York City's. The burglary rate, less than one percent. Rape was unknown.[228] "The old, the weak, the female, the innocent, and those unwilling to fight were rarely the targets of attacks," McGrath found.[229] One resident of Bodie did

> not recall ever hearing of a respectable woman or young girl in any manner insulted or even accosted by the hundreds of dissolute characters that were everywhere. In part, this was due to the respect depravity pays to decency; in part, to the knowledge that sudden death would follow any other course.[230]

Nearly everyone carried a gun. Except for young men who liked to drink and fight with each other, everyone was far more secure than today's residents of cities, where ordinary people cannot carry a firearm for protection.

The experience of Aurora and Bodie was repeated throughout the West. One study of five major cattle towns with a reputation for violence—Abilene, Ellsworth, Wichita, Dodge City, and Caldwell—found that the towns had a combined average of around two criminal homicides per year.[231] During the 1870s, Lincoln County, New Mexico, was experiencing in a state of anarchy and civil war. The homicide rate was astronomical. Similar to the experience in Bodie and Aurora, however, these homicides were almost exclusively confined to drunken males upholding their "honor." Modern big-city crimes such as rape, burglary, and mugging were virtually unknown.[232] A study of the Texas frontier from 1875-90 found that

226. The homicide rate in Aurora was approximately 64 per 100,000; in Bodie, the rate was 116. *Id.* at 254.

227. *Id.* at 255.

228. Bodie had an annual robbery rate of 84 per 100,000 persons. In 1980, the rate in New York City was 1140; in San Francisco-Oakland, 521, and in the United States as a whole, 243. The annual Bodie burglary rate was 6.4 per 100,000. In 1980, the New York City rate was 2661; the San Francisco-Oakland rate was 2267. The overall American rate was 1668. The Bodie theft rate was 180. By contrast, the New York rate was 3369 while San Francisco-Oakland had a rate of 4571. The American rate was 3156. *Id.* at 247-54.

229. *Id.* at 255.

230. Grant H. Smith, *Bodie, Last of the Old-Time Mining Camps*, 4 CAL. HIST. SOC'Y Q. 78-79 (1925).

231. ROBERT A. DYKSTRA, THE CATTLE TOWNS 144-47 (1968). "The average number of homicides per cattle town trading season amounted to only 1.5 per year." *Id.* at 146.

232. ROBERT M. UTLEY, HIGH NOON IN LINCOLN: VIOLENCE ON THE WESTERN FRONTIER 173-79 (1987). Again, as in Aurora and Bodie, the ubiquity of firearms turned many drunken quarrels into homicides. *Id.* at 176.

except for bank, train, and stage-coach robberies, robberies of homes and business were essentially nonexistent. People did not bother locking doors; and except for young men shooting each other in voluntary "fair fights," murder was rare.[233]

John Umbeck's investigation of the High Sierra gold fields in the mid-nineteenth century yielded similar results. After the discovery of gold at Sutter's Mill in 1848, thousands of prospectors rushed to gold fields in the California mountains. There was no police force. Indeed, no property rights law existed because the military governor of California had just proclaimed as invalidated the former Mexican land law without offering a replacement. The competitive greed for gold was intense, and nearly everyone carried firearms. Yet, hardly any violence occurred.[234] Similarly, when much of the Indian territory of Oklahoma simultaneously opened for white settlement, heavily armed settlers rushed in immediately to stake their claims long before effective law enforcement arrived. Still, almost no shooting occurred.[235]

In sum, historian W. Eugene Hollon found "the Western frontier was a far more civilized, more peaceful, and safer place than American society is today."[236] Frank Prassel concluded that this "last great frontier left no significant heritage of offenses against the person, relative to other sections of the country."[237] Americans living with the prevalence of guns of the Old West were thus arguably far safer than Americans living in modern cities such as San Francisco, Detroit, or Cleveland—cities where citizens are restricted in the means with which they may legally protect themselves when they leave their homes.

In modern Washington, D.C., criminals sometimes murder drivers stopped at a traffic light, simply for the pleasure of watching them die. The city government, seemingly incapable of protecting these drivers, forbids the law-abiding populace to possess a handgun in their car, their home, or on their person. Columnist Samuel Francis describes this and other similar city

233. W.C. Holden, *Law and Lawlessness on the Texas Frontier 1875-1890*, 44 SW. HIST. Q. 188 (1940).

234. John Umbeck, *Might Makes Rights: A Theory of the Formation and Distribution of Property Rights*, 19 ECON. INQUIRY 38 (1981).

In other parts of the West, citizens also successfully used a variety of private mechanisms to protect property rights in the absence of effective government. Terry L. Anderson & P.J. Hill, *An American Experiment in Anarcho-Capitalism: The Not So Wild, Wild West*, 3 J. LIBERTARIAN STUD. 9 (1979).

235. Robert Day, *'Sooners' or 'Goners,' They Were Hell Bent on Grabbing Free Land*, SMITHSONIAN, Nov. 1989, at 192, 202.

236. W. EUGENE HOLLON, FRONTIER VIOLENCE: ANOTHER LOOK x (1974).

237. FRANK R. PRASSEL, THE WESTERN PEACE OFFICER: A LEGACY OF LAW AND ORDER 17 (1972).

government systems as "anarcho-tyranny."[238] Such government provides little effective protection against violent criminals, but mobilizes the full power of the state against crime victims who attempt to protect themselves.

Crime flourishes in modern American cities because the American people and their government tolerate it. Bodie, Aurora, and the rest of the Old West had little high culture. Their streets were made of dirt and littered with horse manure. Nonetheless, a woman could walk alone safely after dark in those towns; good people did not cower in fear and allow predatory thugs to terrorize the innocent. Perhaps the people of the Old West better understood what *civilization* implied than do modern Americans.

The evidence from Aurora, Bodie, and the rest of the United States does not prove that guns are an unalloyed good, or that no form of gun control is desirable. Guns in the wrong hands can wreak great harm. Disarming gun abusers would obviously benefit society. The problem with the laws proposed by the various "gun control" groups, however, is that the very persons who have no compunction about perpetrating violent crime will also have no compunction about illegally carrying guns.

G. Police Opinion and Police Competence

Virtually all United States citizens agree that the police may lawfully use force to protect crime victims. Accordingly, the question is not whether force per se is legitimate, but who may legitimately use force. As a moral matter, the creature of government should not have powers greater than its creator, the people. An individual police officer, acting under the best judgment and reasonable understanding of the facts of a particular encounter, has the individual moral authority to fire a weapon for protection of self or another person. How then can the same act, performed by a crime victim, suddenly become immoral? Many police officers would agree that citizen self-defense is legitimate.

The first survey of police attitudes toward concealed carry was a 1976 poll conducted by Boston Police Commissioner Robert diGrazia. Ironically, the poll was part of an effort to find national police support for an initiative to ban handgun ownership in Massachusetts. In the national survey, fifty-one percent of police chiefs agreed with the statement, "Persons who have a general need to protect their own life and property, like those who regularly carry large sums of money to the bank late at night, should be allowed to possess and carry handguns on their person." Fifty-seven percent of chiefs expected their subordinates to be more supportive of such carrying.[239]

Rank-and-file police officers are even more supportive of citizens carrying guns. In 1991, *Law Enforcement Technology* conducted a poll of

238. Samuel Francis, *Anarcho-Tyranny, U.S.A.*, CHRONICLES, July 1994, at 14-19.

239. Blackman, *supra* note 18, at 31.

all ranks of police officers. Seventy-six percent of street officers believed that all trained, responsible adults should be allowed to obtain handgun carry permits; fifty-nine percent of managers agreed.[240] In fact, the above data suggests that police are arguably *more* supportive of carry reform laws than is the general public. Carry reform generally garners about thirty-five percent support in opinion polls of the general public; the range is between about twenty and fifty-seven percent.[241]

Those who hold that the police, and the police alone, should carry defensive firearms apparently presume the police possess abilities that are not possessed by licensed, trained permit holders. As demonstrated earlier in subpart IV. E., however, both scholarly research and police data indicate that ordinary citizens are capable of using firearms competently for defense. In addition, while the vast majority of police officers are likewise competent, police officers are not immune from the foibles and stresses that can lead to unlawful or accidental shootings.

One study of 911 incidents involving police use of deadly force concluded that 125 innocent civilians (16%) were killed in error.[242] Another study found almost thirteen percent of killings by Chicago officers during 1969-70 to be "prima facie cases of manslaughter or murder," and "several others presented factual anomalies sufficient to suggest that a thorough investigation might well have revealed such prima facie cases."[243] Only one of these cases resulted in prosecution or even reprimand, despite being in plain violation of official policy.[244] By contrast, seventy-

240. *The Law Enforcement Technology Gun Control Survey*, LAW ENFORCEMENT TECH., July-Aug. 1991, at 14-15. The poll was based on readers sending in a survey form to the magazine. Because the polling was not conducted by random sample, the poll arguably may not reflect a true cross-section of all police opinion. Of course a cadre of police chiefs who show up at a state capitol to testify against a concealed carry bill may also not be representative of police opinion, especially the opinion of street patrol officers.

241. For example, in a recent U.S. NEWS & WORLD REPORT poll, 29% of 1000 citizens polled favored allowing "ordinary Americans . . . , after proper training, to carry a concealed weapon." *News Release*, U.S. NEWS & WORLD REPORT, Aug. 8, 1994, at 4. *See also supra* note 173 and accompanying text.

242. Arthur L. Kobler, *Figures (and Perhaps some Facts) on Police Killings of Civilians in the United States 1965-1969*, 31 J. SOC. ISSUES 185, 190 (1975). Internal police department review of Kansas City police shootings in which a person was struck by a bullet found that for the years 1973-1978, 40.2% of the discharges were unjustifiable. WILLIAM A. GELLER & MICHAEL S. SCOTT, DEADLY FORCE: WHAT WE KNOW 282 (1992).

243. Richard W. Harding & Richard P. Fahey, *Killings by Chicago Police, 1969-70: An Empirical Study*, 46 S. CAL. L. REV. 284 (1973). *See also* William A. Geller & Kevin J. Karales, *Shootings of and By Chicago Police: Uncommon Crises, Part I: Shootings by Chicago Police*, 72 J. CRIM. L. & CRIMINOLOGY 1813 (1981).

244. Harding & Fahey, *supra* note 243, at 284.

five percent of shootings by Los Angeles police officers led to either the disciplining or retraining of the officer because of error.[245]

New York City police officials review any incidence when a police officer fires a gun other than during target practice. Such reviews have found that about twenty percent of discharges are accidental, and another ten percent are intentional discharges in violation of force policy. In other words, only seventy percent of firearms discharges by New York City police are both intentional and in compliance with force policy.[246]

Not only are police misuses of firearms in the line of duty far from uncommon, police misuse of guns outside the line of duty is all too frequent. When an off-duty New York City policeman fires a gun, one out of four firings will be an "accident, a suicide, or an act of frustration."[247] The rate of substantiated crimes perpetrated by New York City police officers is approximately 7.5 crimes per year, per thousand officers. The number of New York police crimes alleged is 112.7 per thousand officers.[248]

Opponents of concealed carry readily suggest hypotheticals of how an armed citizen might overreact to a particular situation. In reality, however, actual instances of such overreaction by licensed, trained citizens are rare.[249] In contrast, actual instances of police overreaction are well known.

In Portland, Oregon, police officers on a drug raid used German MP-5 submachine guns to shoot a grandfather at least twenty-eight times. The autopsy suggested that over twenty shots were fired into his back as he lay

245. Eric Lichtblau, *LAPD Officers Faulted in 3 of 4 Shooting Cases*, L.A. TIMES, Aug. 14, 1994, at A1.

246. Gina Goehl, *1989 Firearms Discharge Assault Report* (New York: Police Academy Firearms and Tactics Section, April 1989) (DM 369). For 1985-89, the cumulative figures are 1193 total discharges, 824 intentional and not in violation of force policy (69.1%), 112 intentional and in violation (9.4%); 135 accidental but not in violation of policy (11.3%), and 122 accidental and in violation (10.2%). The percentages and numbers are slightly different from those in the Report itself, due to a Departmental mathematical errors in addition; the Department mistakenly totals the number of intentional lawful shootings as 836 (rather than 824), and mistakenly records the total of all incidents at 1,143, rather than 1,193. As a result, the Department reports the sum of all categories of incidents is 105.4%, rather than 100%. In Philadelphia, accidents in 1989 comprised 27% of police firearms discharges; in Dade County that same year, accidents were 31%. GELLER & SCOTT, *supra* note 242, at 196.

247. *The Guns of Kennesaw*, N.Y. TIMES, Mar. 18, 1982, at A26. Some studies suggest that as many as one in four police officers may be an alcoholic. GELLER & SCOTT, *supra* note 242, at 288 n.26.

248. RICHARD NEELY, TAKE BACK YOUR NEIGHBORHOOD: A CASE FOR MODERN-DAY VIGILANTISM 74-75 (1990). Other major cities reported similar rates of substantiated allegations. *Id.*

249. *See supra* subpart IV.E.

face down over a chair. Rationalizing the police action, the police chief predicted the shooting was "a sign of things to come as criminals become better armed and the police try to match their firepower." The grandfather had been carrying an unloaded two-shot derringer.[250]

In Tyler, Texas, a police officer, previously accused of using excessive force, shot to death a bedridden eighty-four-year-old black woman during an early-morning drug raid. No drugs were found.[251]

In Los Angeles, an officer entered the following message on his computer report: "I almost got me a Mexican last nite [sic] but he dropped the dam [sic] gun to [sic] quick, lots of wit."[252]

The above incidents are, of course, exceptions to the generally high level of police conduct. Therefore, anecdotal stories of police abuse do not provide a good reason for believing that the police as a whole cannot be trusted with guns. By the same reasoning, unsupported hypotheticals about how a licensed, trained citizen *might* act do not provide appropriate argument for believing that citizens cannot be trusted with guns. Moreover, with the proliferation of high-technology training and firearms schools, citizens willing to invest some time can be readily schooled in defensive firearms use to at least the same level of competence as the average police officer.[253]

Few persons who object to ordinary citizens carrying handguns raise the same objections about security guards carrying handguns.[254] Ironically, security guards generally receive even less training than the police.[255] Security guards are visible targets for attack, but so are women who must walk alone at night in dangerous neighborhoods. If law-abiding citizens pass a licensing and training system equivalent to that of security guards or police, no basis exists for denying these citizens a permit. A wealthy owner of a jewelry store can hire security guards for protection. Generally, however, a low-income owner of a convenience store cannot afford a security guard. If the convenience store owner is as objectively qualified as most security guards to carry a gun, to deny a handgun permit results in

250. James Crawford, *Police Firepower a Cause for Concern*, OREGONIAN, May 29, 1991, at C11; Letter from Hap Wong, attorney for the family of the shooting victim, to James Crawford (Mar. 16, 1992) (on file with authors).

251. *Texas Grand Jury Fails to Indict Officer Who Killed Elderly Black Woman in "Cocaine Raid" That Yielded No Drugs or Charges*, NEWS BRIEFS, Aug. 1992, at 8.

252. GELLER & SCOTT, *supra* note 242, at 205.

253. For a good analysis of giving the police special handgun privileges, see James B. Jacobs, *Exceptions to a General Prohibition on Handgun Possession: Do They Swallow Up the Rule?*, 49 LAW & CONTEMP. PROBS. 5 (1986).

254. "Private security guards are simply vigilantes for the rich," observes West Virginia Supreme Court Justice Richard Neely. NEELY, *supra* note 248, at 51.

255. *Id.* at 51-52.

economic discrimination that values the property of the jewelry store owner more highly than the life of the convenience store owner.

H. Does the Gun Control Lobby Mean What it Says?

If the forces that have imposed a national background check for purchasing a handgun are serious about their goals, they should endorse concealed carry reform. The gun control lobbies support all sorts of bills as being worthwhile if it saves just one life. Concealed carry reform clearly passes the "saves one life" test.[256] Nevertheless, the gun control lobbies have opposed concealed carry reform in every state where it has been proposed.

Concealed carry reform laws usually feature the exact kinds of controls that groups such as Handgun Control, Inc. (HCI) claim are the essence of a sensible gun policy: mandatory safety training, licenses which must be renewed every few years, fingerprinting, background checks, disqualifications for people with records of alcoholism or drug abuse, and a months-long application/cooling-off period.[257] Although every one of these HCI-backed controls is also backed by the National Rifle Association and by other advocates of concealed carry reform, HCI rejects any idea that concealed carry reform can form the basis of any kind of compromise regarding gun control. As HCI Chair Sarah Brady put it, "To me, the only reason for guns in civilian hands is for sporting purposes."[258] Brady's husband, former White House press secretary, Jim Brady, answered a reporter's question about whether any handguns were defensible: "For target shooting, that's okay. Get a license and go to the range. For defense of the home, that's why we have police departments."[259]

The views of HCI's current leaders are consistent with those of its patriarch, the late Nelson "Pete" Shields, who advised: "As police officers have said for years, the best defense against injury is to put up no defense—give them what they want, or run. This may not be 'macho,' but it can keep you alive."[260] HCI's advice may be prudent when a victim believes a mugger's promise that handing over the wallet will speedily end the encounter. But should Mr. Shield's philosophy become the binding legal rule for potential rape victims? For stalking victims? For persons who reasonably fear that the mugger will kill them, so as to eliminate a witness?

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256. *See supra* subpart IV.A.

257. *See supra* Part II.

258. Tom Jackson, *Keeping the Battle Alive*, TAMPA TRIB., Oct. 21, 1993, at 1, 6.

259. James Brady, *In Step With: James Brady*, PARADE MAGAZINE, June 26, 1994, at 18 (The author is coincidentally named James Brady.). Brady further argues that having a firearm to defend one's home is "six times more likely to kill a loved one." *Id.*

260. PETE SHIELDS, GUNS DON'T DIE, PEOPLE DO 124-25 (1981).

HCI has a right to participate in the political process and to advance laws based on the belief that civilians should not have guns for defensive purposes. The gun control debate would be more productive, however, if HCI's moral intuition were not subsumed to the implausible claim that the very laws which HCI considers perfect for determining who may buy a gun suddenly become hopelessly flawed when used to determine who may carry a gun.

V. DOMESTIC VIOLENCE AND OTHER IMMINENT PERILS

Regardless of how the general issue regarding concealed carry reform is resolved, one law deserves consideration for immediate enactment in every jurisdiction in the country: that stalking victims, domestic violence victims, and other persons who are in immediate peril may carry a firearm, without a need to go through the carry permit application process. Such a law is already in effect in California. It states:

> A violation of Section 12025 is justifiable when a person who possesses a firearm reasonably believes that he or she is in grave danger because of circumstances forming the basis for a current restraining order issued by a court against another person or persons who has or have been found to pose a threat to his or her life or safety.[261]

The California law reflects the reality that, even in a jurisdiction where a sheriff may appreciate the need of citizens to protect themselves, the carry permit application process may take weeks or months. When a stalker may attack within hours, a six-week delay may be fatal. The California law is also carefully bounded because it does not allow a person to carry a gun simply because of vague, subjective fears. The California law applies only when an independent governmental body—a court—has found a particular threat to the victim, a threat sufficient to warrant a restraining order. Notably, the California law applies only so long as the restraining order remains in effect. Once the threat has passed, so does the exemption from the normal carry permit law.[262]

Ohio has an even broader exemption from the need for a carry permit. Under the Ohio statute, any merchant who is engaged in or going to or from his or her business may also carry a firearm for defensive purposes without obtaining a permit. In addition, any other person who reasonably has cause to fear criminal attack may carry.[263]

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261. CAL. PENAL CODE § 12025.5 (West 1992 & Supp. 1995).

262. *Id.*

263. OHIO REV. CODE ANN § 2923.12(C) (Anderson 1993 & Supp. 1994). The law is discussed in Ohio v. Assad, 614 N.E.2d 772 (Ohio Ct. App. 1992) (reversing conviction of merchant who carried a gun).

Because criminals will carry anyway, whether or not they are being threatened, the Ohio law deserves consideration by legislatures that want to avoid getting into the detail of creating a licensing system. Even in states which do have a licensing system, the California and Ohio statutes may be appropriate exceptions to the requirement to obtain a license.

VI. FEDERAL CARRY PERMITS?

At the state or federal level, a law similar to that of the state of Washington—clear and unambiguous as to who may obtain a permit, and clearly excluding people who are threats to public safety—ought to satisfy gun control advocates whose goal is keeping handguns out of the wrong hands, rather than banning handguns entirely. Consistent with general principles of federalism, carry reform laws might best be adopted by the individual states, rather than imposed by the federal government. As the fact that concealed carry reform protects rather than endangers public safety becomes clearer with the experience of various states, the remaining nonreform states will have the option of copying or refining successful carry reforms.

Nonetheless, a national concealed weapon permit would facilitate interstate travel by simplifying the permit status of a person who travels from state to state. The supporters of a national background check have no problem with the federal government imposing on the states a handgun purchase background check or waiting period. Accordingly, gun control advocates would be inconsistent to claim that a national carry permit law using a "Brady Bill" type background check would violate states' rights.

National carry reform would prevent such a situation as recently occurred in New Jersey. A North Carolina man was driving through New Jersey when he was stopped and his car searched. The New Jersey police arrested the man and confiscated his gun. The arrest was based on the theory that anyone who sets foot (or tire) in New Jersey, for even a moment, may not possess any firearm unless the person has a New Jersey gun permit.[264]

National carry reform legislation could, however, be an imposition on (1) those states that have no concealed weapon statute, such as Vermont, or (2) states whose concealed carry statutes only apply in cities and towns, such as Idaho. Accordingly, a federal reform statute could require states to

264. Tom Joyce, *Price of Freedom: North Carolina Man Gives up Gun He Can Carry at Home*, GLOUCESTER COUNTY TIMES (N.J.), Apr. 6, 1993, at 15. The man accepted a plea bargain in which he agreed to probation, making regular visits to a New Jersey probation officer, and forfeiting his handgun. Allegedly, the man had been speeding when he was stopped on the New Jersey Turnpike. Having no basis for any suspicion, the arresting officer asked the man if he had any weapons in the car. Being an honest person, the man admitted that he did. *Id.*

issue permits, but need not prevent states from allowing citizens to carry in their own states without a permit. Alternatively, at least as a starting point, each state could be required to honor every other state's concealed handgun permits, just as drivers licenses are recognized by all states.

Advocates of national carry reform legislation should recognize the inherent risks that the sometimes more restrictive training and misdemeanor disqualification portions of carry permit laws might be expanded into conditions for mere possession of handguns. Given the current national administration's fixation with gun control, the potential for such restrictions being enacted at the national level is much greater than the prospects for similar restrictions at the state level.

A federal carry permit could additionally lead to partial federal registration of gun owners, because everyone applying for a permit would be on a federal list. State-level carry reform laws also create a risk of centralized record-keeping of gun owners. State or federal carry reform could minimize the centralization of data by having licenses issued by city or county officials and forbidding the consolidation of the local government data. But, as the computer hacker saying goes, "Data want to be free." Any system of licensing or permitting any activity relating to individual gun owners thus necessarily creates risks of government registration, especially as sharing of information in computer data bases becomes easier.

A law requiring states to issue carry permits to licensed, trained citizens after a background check would probably not violate principles of federalism. First of all, under section five of the Fourteenth Amendment of the Constitution, Congress has the power to enact laws that require states to respect fundamental civil rights.[265] Accordingly, Congress would have the power to pass remedial legislation regarding states whose carry laws infringe the Second-Amendment right "to keep *and bear* arms." This remedial power would also extend to the separate right to own and carry handguns for self-defense, which recent scholarship suggests is contained within the Ninth Amendment.[266] Because Congress has repeatedly determined that the Second Amendment guarantees an individual right,[267] and because the

265. The Fourteenth Amendment states in part:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. U.S. CONST. amend. XIV, § 1.

Furthermore, "[T]he Congress shall have power to enforce, by appropriate legislation, the provisions of this article." *Id.* § 5.

266. *E.g.*, Nicholas J. Johnson, *Beyond the Second Amendment: An Individual Right to Arms Viewed Through the Ninth Amendment*, 24 RUTGERS L.J. 1 (1992).

267. When introducing the Second Amendment and other guarantees in the Bill of Rights, Congressman James Madison explained that the amendments "relate first to private rights." James Madison, 12 PAPERS 193-94 (1979). Madison praised the major popular analysis of the Second Amendment, which explained, "the people are confirmed . . . in their

history of the Fourteenth Amendment shows that it was adopted with the expressed intent to end state infringements on the right to bear arms,[268] congressional use of the Fourteenth Amendment to enforce the Second Amendment would pose few constitutional problems.

In addition, Article IV of the Constitution guarantees that "[t]he Citizens of each State shall be entitled to all Privileges and Immunities of citizens in the several States," and Congress is empowered to enforce the guarantee.[269] Precedent suggests that the right to carry a firearm for protection is within the scope of the "privileges and immunities" clause.[270]

Although the modern American debate over the carrying of defensive firearms dates from Florida's 1987 reform statute,[271] the issue is much older. The founders of the American republic were well aware of the severe gun control laws in despotisms such as France, especially regarding the carrying of firearms. Although monarchists defended these laws on the grounds of public safety, the founders cynically viewed such laws as merely a prop for authoritarian rule. John Adams and Thomas Jefferson, who disagreed on many issues, both cited with approval the following passage from Cesare Beccaria's 1764 book, *On Crimes and Punishments*:

right to keep and bear their private arms." *Id.* at 239-40, 257; Tench Coxe, FED. GAZETTE, June 18, 1789, at 2.

In 1982, the Senate Subcommittee on the Constitution investigated historical evidence, and unanimously concluded that the Second Amendment guaranteed an individual right to arms that was made enforceable against the states by the Fourteenth Amendment. Staff of Senate Comm. on the Judiciary, 97th Cong., 2d Sess., Report on The Right to Keep and Bear Arms 11 (Comm. Print 1982) (unanimous report). In 1986, Congress enacted the Firearm Owners' Protection Act, whose preamble stated: "The Congress finds that—(1) the rights of citizens—(A) to keep and bear arms under the Second Amendment to the United States Constitution [and Fourth, Fifth, Ninth, and Tenth Amendment rights]" required additional prot[illegible] which Congress was enacting. In enacting the Property Requisition Act of 1941 to meet defense needs for the global conflict, Congress specifically forbade the requisitioning or registration of firearms. In enacting the Fourteenth Amendment, Congress made frequent references to its desire to prevent state governments from interfering with the right to freedmen to keep and bear arms. *See* Stephen P. Halbrook, *Congress Interprets the Second Amendment: Declarations of a Coequal Branch on the Individual Right to Keep and Bear Arms*, 62 TENN. L. REV. 597 (1995).

268. Michael K. Curtis, NO STATE SHALL ABRIDGE: THE FOURTEENTH AMENDMENT AND THE BILL OF RIGHTS 52-53, 56, 72, 88, 104, 140-41, 164 (1986).

269. U.S. CONST. art. IV, § 2, cl. 1.

270. In the notorious but never overruled *Dred Scott* decision, Chief Justice Taney asserted the "absurdity" of the idea that a black man had equal rights with a white man under the United States Constitution by listing the results that would stem from such a decision. Blacks would be free to travel wherever they wished "without pass or passport," would enjoy "full liberty of speech in public and in private," and would be allowed "to hold public meetings upon political affairs, and to keep and carry arms wherever they went." Dred Scott v. Sandford, 60 U.S. 393, 417 (1856).

271. *See supra* subpart II.B.

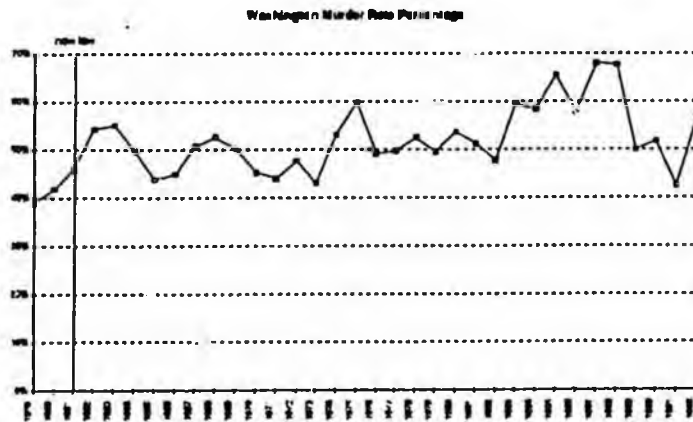
> False is the idea of utility that sacrifices a thousand real advantages for one imaginary or trifling inconvenience; that would take fire from men because it burns, and water because one may drown in it; that has no remedy for evils, except destruction. The laws that forbid the carrying of arms are laws of such a nature. They disarm those only who are neither inclined nor determined to commit crimes. Can it be supposed that those who have the courage to violate the most sacred laws of humanity, the most important of the code, will respect the less important and arbitrary ones, which can be violated with ease and impunity, and which, if strictly obeyed, would put an end to personal liberty—so dear to men, so dear to the enlightened legislator—and subject innocent persons to all the vexations that the guilty alone ought to suffer? Such laws make things worse for the assaulted and better for the assailants; they serve rather to encourage than to prevent homicides, for an unarmed man may be attacked with greater confidence than an armed man. They ought to be designated as laws not preventative but fearful of crimes, produced by the tumultuous impression of a few isolated facts, and not by thoughtful consideration of the inconveniences and advantages of a universal decree.[272]

Whether or not concealed carry reform becomes an important issue before Congress, the issue will continue to arise before state legislatures. Concealed carry reform does not turn otherwise law-abiding citizens into hot-tempered murderous psychopaths. To the contrary, the evidence shows that concealed carry reform is sometimes associated with saving lives; and where it does not appear to have done any good, it at least did no harm.

272. CESARE BECCARIA, ON CRIMES AND PUNISHMENTS 87-88 (Henry Paolucci trans., 1963) (1764). Beccaria is generally regarded as the founder of criminology. Adams quoted Beccaria's analys[illegible]ing of the Boston Massacre trial. Kates, *supra* note 203, at 234 n.132.

APPENDIX: STATE GRAPHS

GRAPH 1



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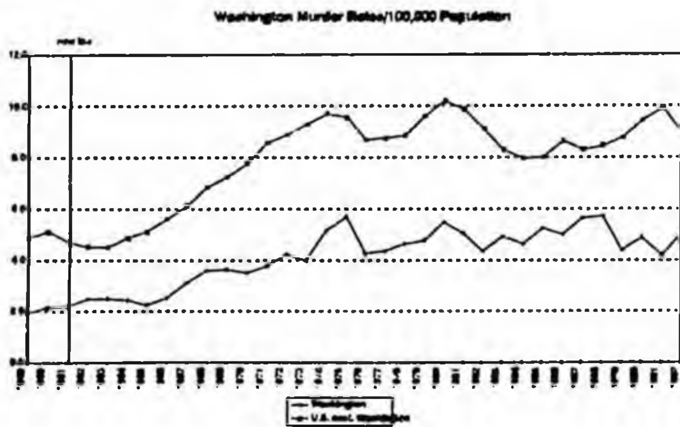

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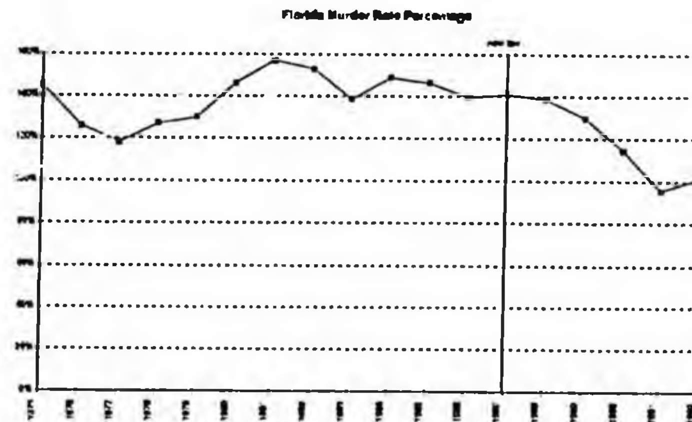

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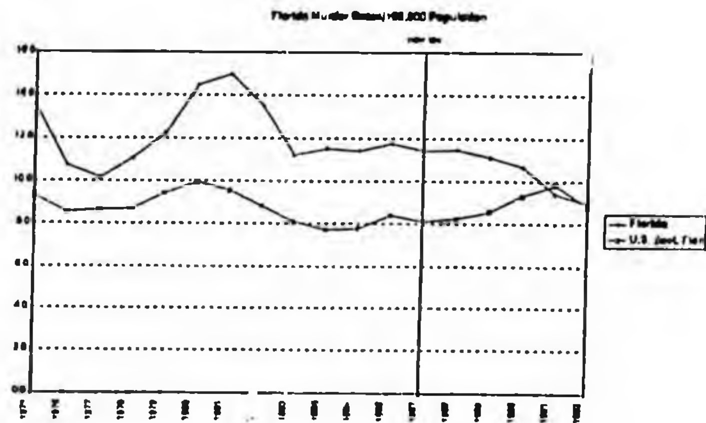

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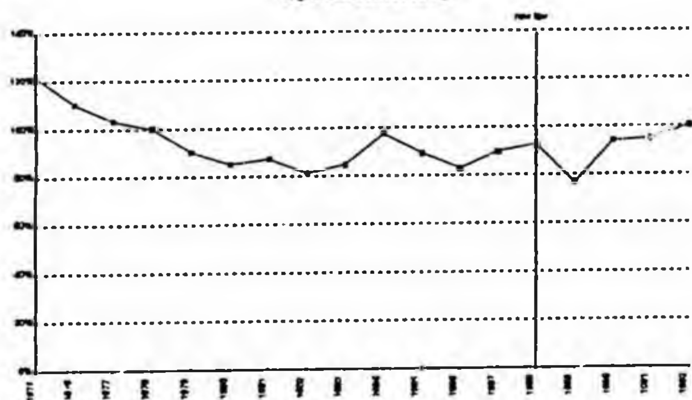

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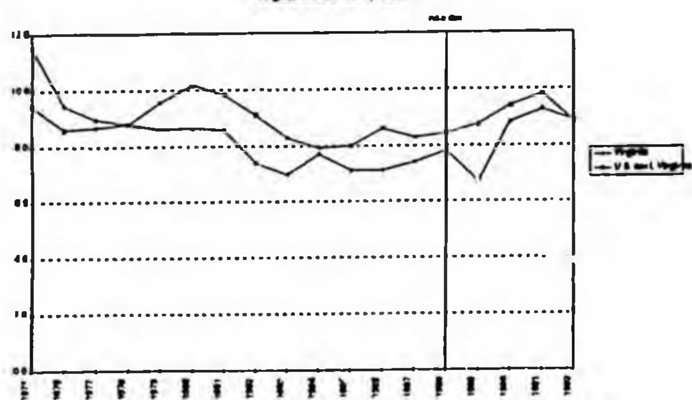

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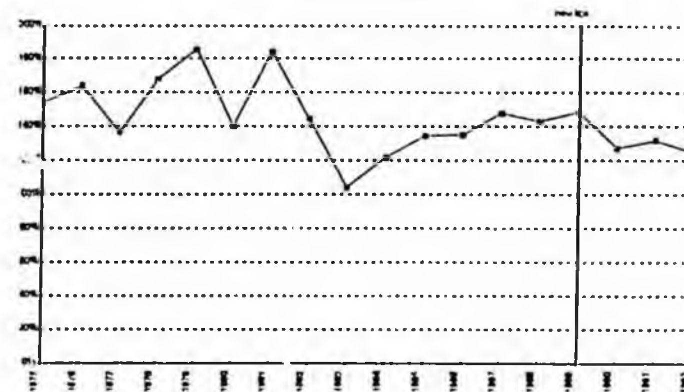

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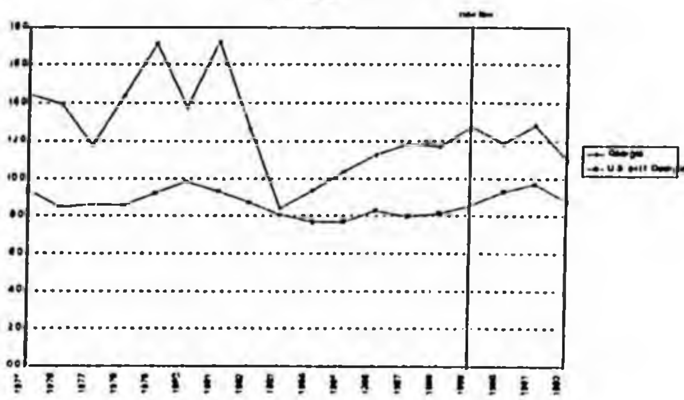

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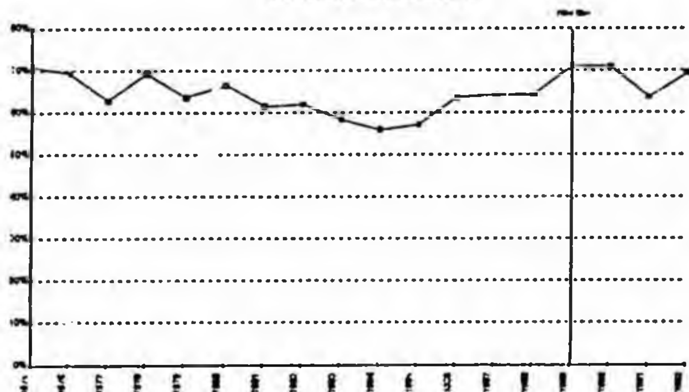

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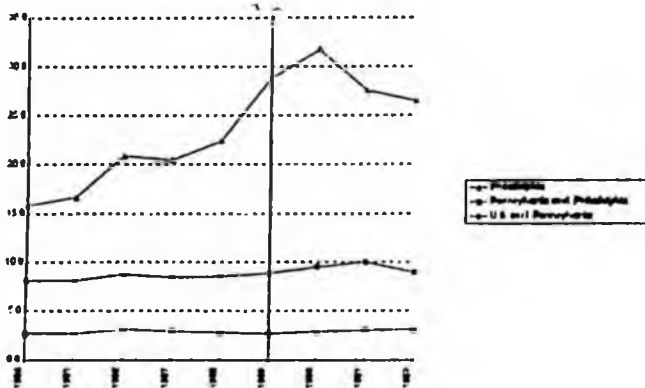

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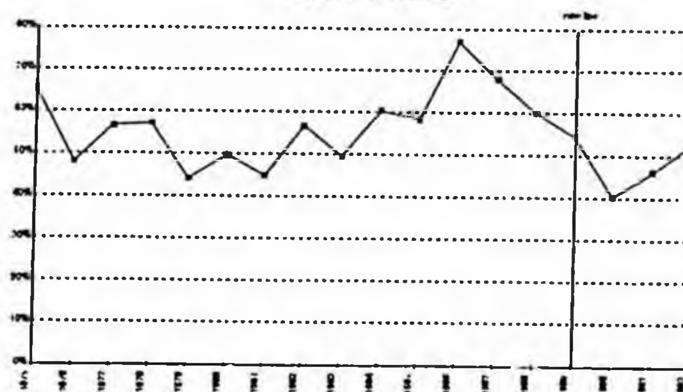

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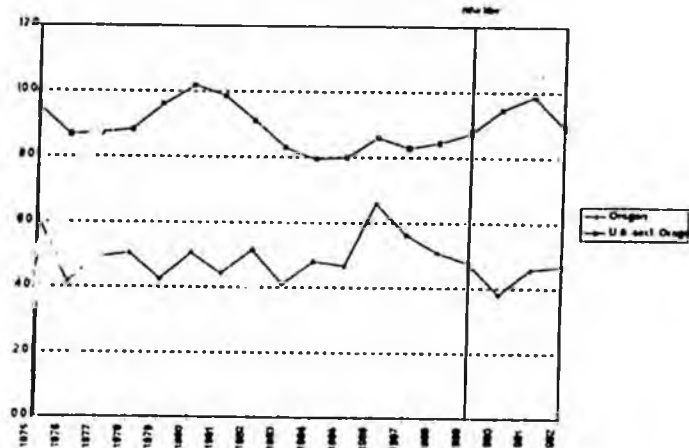

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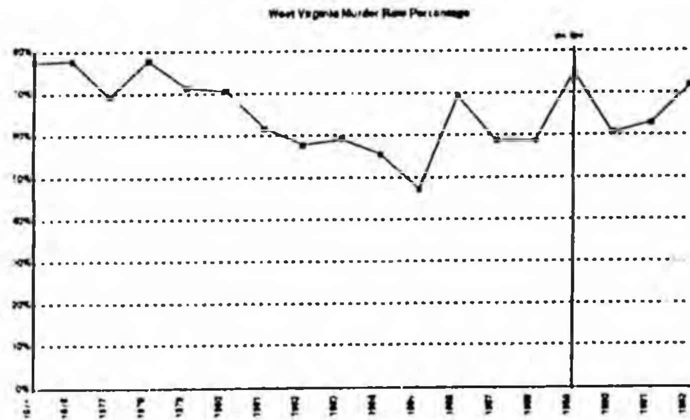

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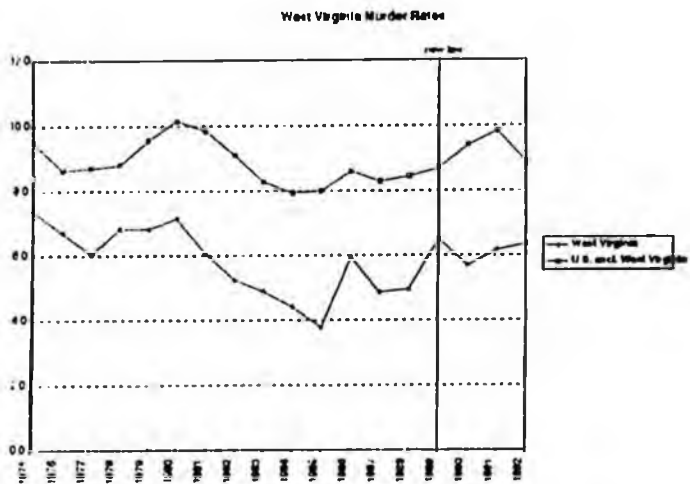

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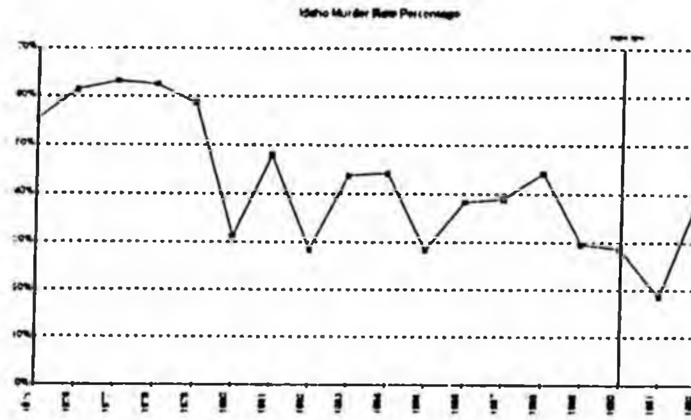

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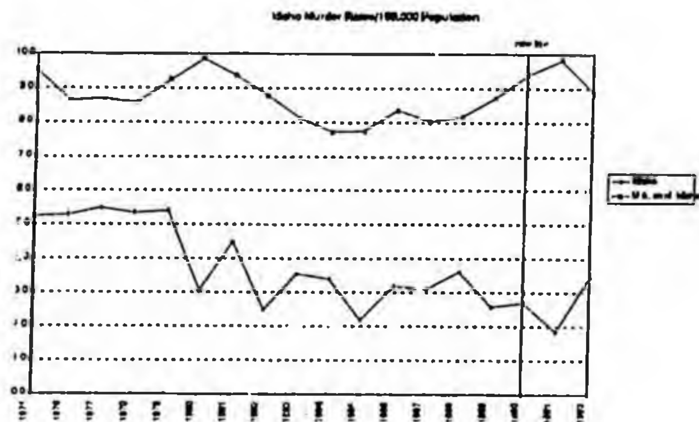
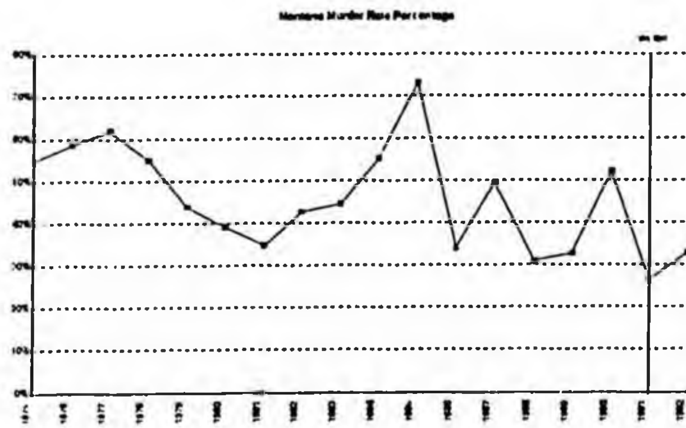
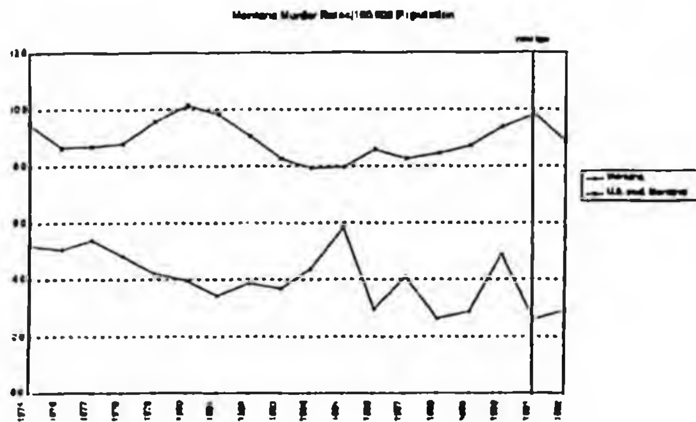


GRAPH 17



GRAPH 18



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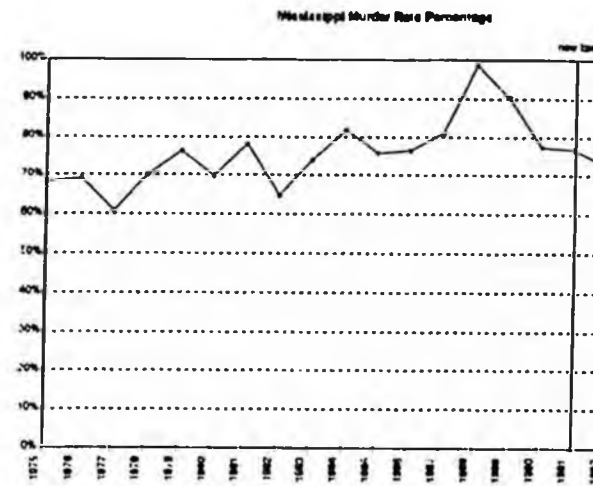
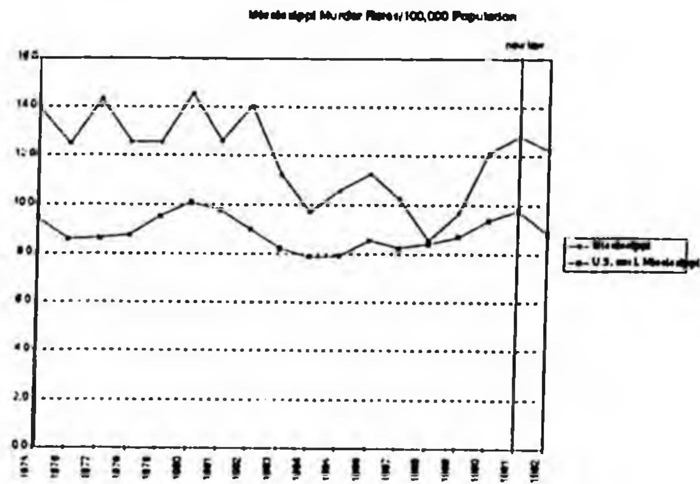


GRAPH 20



ALASKA COURT SYSTEM
OFFICE OF THE ADMINISTRATIVE DIRECTOR
ADMINISTRATIVE BULLETIN NO. 30
(Amended Effective January 15, 1989)

RECEIVED

TO: ALL HOLDERS OF ADMINISTRATIVE BULLETIN SETS:

Area Court Administrators
Clerk of the Appellate Courts
Third District Rural Training Assistant
Full-Time Clerks of Court
Magistrates at locations with no full-time clerk
Law Libraries at Anchorage, Fairbanks, Juneau & Ketchikan
Presiding Judges
Senior Staff
Administrative Associate

SUBJECT: Firearms

No firearms or other weapons may be brought onto the premises of any court facility, or into the portion of any other building occupied by the court system, except for weapons which are to be used as evidence in court proceedings.

Weapons to be used as evidence in court proceedings must be marked and prepared in accord with the terms of Administrative Bulletin No. 9, section IV(C). Each presiding judge may prescribe procedures for courts within his or her district requiring prior notification to designated court personnel before weapons to be used as evidence may be brought on court premises.

This bulletin does not apply to court system security employees and peace officers.

Dated: 10-24-88

Effective Date: January 15, 1989

Arthur H. Snowden, II
Administrative Director

This bulletin was originally issued as No. 86-7, effective December 17, 1986. Amended to correct reference to Bulletin No. 9.

Original Distribution:
- Supreme Court Justices
- Presiding Judges
- Area Court Administrators
- Stephanie Cole
- Gerry Dubie
- David Lampen

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for malfeasance or
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NOTES TO DECISIONS

Quoted in Delahay v. State, 476 P.2d 908 (Alaska 1970).

Section 13. Compensation. Justices, judges, and members of the judicial council and the Commission on Judicial Qualifications shall receive compensation as prescribed by law. Compensation of justices and judges shall not be diminished during their terms of office, unless by general law applying to all salaried officers of the State.

Revisor's notes. — CSHJR 32(Jud) am S (1981), effective December 24, 1982, which changed the "Commission on Judicial Qualifications" to the "Commission on Judicial Conduct" inadvertently omitted express amendment of this section.

Effect of amendments. — The amendment, effective October 11, 1968 (5th Legislature's 2d FCCS SCS CSHJR 74 (1968)), inserted "and the Commission on Judicial Qualifications" in the first sentence.

NOTES TO DECISIONS

"Term". — With the exception of this article, wherever "term" or "service at the pleasure of" appears in the constitutional text originally adopted, the reference is to a period of service for a particular office, thus allowing the drafters to be precise in their terminology. The language of this section and § 4 of this article, on the other hand, applies to any judge of any court the legislature might create, and "term" in that context may intend only the more general, though equally valid connotation of any limitation on a period of service. Buckalew v. Holloway, 604 P.2d 240 (Alaska 1979).

"Term of office" as used in this section means the time to which a justice or judge is entitled to hold office and does not relate to the 10-year or six-year intervals between retention elections for justices and judges. Hudson v. Johnstone, 660 P.2d 1180 (Alaska 1983).

Collateral references. — 46 Am.Jur.2d, Judges, §§ 62 to 71.

48A C.J.S., Judges, §§ 75 to 81, 84.

Section 14. Restrictions. Supreme court justices and superior court judges while holding office may not practice law, hold office in a political party, or hold any other office or position of profit under the United States, the State, or its political subdivisions. Any supreme court justice or superior court judge filing for another elective public office forfeits his judicial position.

Opinions of attorney general. — The prohibition against dual office holding is literally enforced in Alaska. December 27, 1976 Op. Att'y Gen.

The purpose of the prohibition against dual office holding is to guard against conflicts of interest, self-aggrandizement, concentration of power, and dilution of separation of powers in regard to the exercise of the executive, judicial, and legislative functions of the state government. December 27, 1976 Op. Att'y Gen.

Since the Board of Regents of the University of Alaska is not an interbranch commission, a judge may not sit as a regent while holding office. December 27, 1976 Op. Att'y Gen.

A judge does not sit on the Board of Regents in a representative capacity of the judicial branch. When he sits as a regent he is not exercising judicial power but rather certain executive powers of control vested in the regents over the state's sole institution of higher learning. This he may not do. December 27, 1976 Op. Att'y Gen.

The University Alaska is an instrumentality of the state, and membership on its Board of Regents is necessary an office under the state. December 27, 1976 Op. Att'y Gen.

NOTES TO DECISIONS

Meaning of phrase "position of profit". — See Begich v. Jefferson, 441 P.2d 27 (Alaska 1968).

And its intent. — The term "position of profit" was intended to prohibit all other salaried non-temporary employment under the United States or the State of Alaska. Begich v. Jefferson, 441 P.2d 27 (Alaska 1968).

Applied in Acevedo v. City of N. Pole, 672 P.2d 130 (Alaska 1983).

Section 15. Rule-Making Power. The supreme court shall make and promulgate rules governing the administration of all courts. It shall make and promulgate rules governing practice and procedure in civil and criminal cases in all courts. These rules

may be changed by the legislature by two-thirds vote of the members elected to each house.

NOTES TO DECISIONS

I. General Consideration.
II. Legislative Review.

I. GENERAL CONSIDERATION.

Scope of rule-making power. — The supreme court's rule-making power under this section is explicitly broad and very nearly complete. Citizens Coalition for Tort Reform, Inc. v. McAlpine, 810 P.2d 162 (Alaska 1991).

Authority to enact procedures is judicial. — While the power to create substantive rights is a legislative power, the authority to enact procedures to implement those rights is, by virtue of this section, judicial. Thomas v. State, 566 P.2d 630 (Alaska 1977).

In Alaska, the supreme court is given exclusive, initial power to make rules governing practice and procedure and they need not look to the legislature's intentions to discern whether it has attempted to prescribe a different procedure than that contained in a court rule, unless the legislature has acted in the requisite manner to change a rule. Nolan v. Sea Airmotive, Inc., 627 P.2d 1035 (Alaska 1981).

Because administration of justice is day-to-day business of courts. — A reason for placing in the judicial branch of government rather than in the legislature the initial and primary responsibility for making rules of court practice and procedure is that the administration of justice is the day-to-day business of the courts; they are better equipped than a legislature to know the most effective and easiest methods of conducting that business. City of Valdez v. Valdez Dev. Co., 506 P.2d 1279 (Alaska 1973).

Promulgation of rules of practice and procedure. — The superior court has no responsibility or authority to promulgate rules of practice and procedure. Lee v. State, 374 P.2d 868 (Alaska 1962).

Under this section the responsibility for promulgating rules governing practice and procedure in civil and criminal cases in all courts rests with the supreme court. Lee v. State, 374 P.2d 868 (Alaska 1962).

Supreme court can return case to trial court for further proceedings. — In any appropriate case where there is disregard for the rules of court, the supreme court can exercise its supervisory power to return the case to the trial court for further proceedings. McCracken v. Davis, 560 P.2d 771 (Alaska 1977).

Declaration of appellate rule supremacy over procedural statutes is an expression of the judicial power distributed to the courts by this section and § 1 of this article. Winegardner v. Greater Anchorage Area Borough, 534 P.2d 541 (Alaska 1975).

Distinction between substantive and procedural law. — Substantive law creates, defines and regulates rights, while procedural law prescribes the method of enforcing the rights. Channel Flying, Inc. v. Bernhardt, 451 P.2d 570 (Alaska 1969); Nolan v. Sea Airmotive, Inc., 627 P.2d 1035 (Alaska 1981).

For the court to invalidate a statute as "procedural," requires them to find, first, that the statute indeed conflicts with a rule promulgated by the court, and, second, that the main subject of the statute is not substantive with only an incident effect on procedure, Winegardner v. Greater Anchorage Area Borough, 534 P.2d 541 (Alaska 1975), Channel Flying, Inc. v. Bernhardt, 451 P.2d 570 (Alaska 1969), and finally, that the legislature has not changed the rule with the stated intention of doing so, Leege v. Martin, 379 P.2d 447 (Alaska 1963). Nolan v. Sea Airmotive, Inc., 627 P.2d 1035 (Alaska 1981).

The manner in which the exercise of judicial power may be invoked, initially by commencing a civil action in court, is a matter directly involved with court practice and procedure, the regulation of which has been committed to the supreme court under the constitution. Silverton v. Marler, 389 P.2d 3 (Alaska 1964).

Children's proceedings are among "civil and criminal cases in all courts" over which this section gives the supreme court rule-making authority which is intended to be plenary and not capable of reduction by relabeling of proceedings. RLR v. State, 487 P.2d 27 (Alaska 1971).

The investigative demand procedure set forth in AS 45.50.590 and 45.50.592 does not conflict with the rulemaking power vested in the Supreme Court by this section insofar as it involves hearings to modify or set aside investigative demands and not proceedings to compel production of document. Matanuska Maid, Inc. v. State, 620 P.2d 182 (Alaska 1980).

The time limit for filing an appeal from an administrative order is a procedural matter and is therefore subject to the Alaska supreme court's supremacy over such matters pursuant to this section. Owsichek v. State, Guide Licensing & Control Bd., 627 P.2d 616 (Alaska 1981).

AS 47.10.070, providing for exclusion of the public from juvenile hearings, is procedural, so is outside the scope of legislative authority unless two-thirds of each house of the legislature votes to change the rule promulgated by the supreme court in this matter. RLR v. State, 487 P.2d 27 (Alaska 1971).

AS 22.20.022 is not constitutionally invalid as an attempt to usurp the rule-making powers of the supreme court insofar as it provides for a peremptory disqualification of a judge. Channel Flying, Inc. v. Bernhardt, 451 P.2d 570 (Alaska 1969).

AS 22.20.022 does not merely regulate procedure. With or without it the particular action in court takes the same course. The statute rather creates and defines a right — the right to have a fair trial before an unbiased and impartial judge. This is something more than merely prescribing a method of enforcing a right. The main subject matter of AS 22.20.022 is substantive in nature and was within the province of the legislature to deal with. Channel Flying, Inc. v. Bernhardt, 451 P.2d 570 (Alaska 1969).

Right under AS 22.20.022 subject to rule-making power. — While recognizing the legislature's authority to create the right to disqualify a judge by peremptory challenge under AS 22.20.022, the procedure to be followed in implementing that right is subject to the rule-making power vested in the supreme court by this section. Padie v. State, 566 P.2d 1024 (Alaska 1977).

Criminal Rule 24(d) is not unconstitutional insofar as it purports to allow the prosecution peremptory challenges of jurors. Smiloff v. State, 589 P.2d 28 (Alaska 1978).

MEMORANDUM

State of Alaska

Department of Law

29

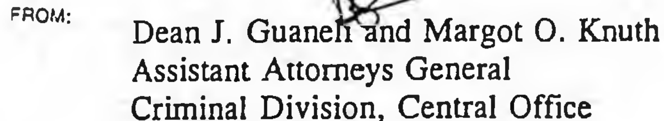
TO: Ronald L. Otte
Commissioner
Department of Public Safety

DATE: July 12, 1995

FILE NO.: 663-95-0323

TEL. NO.: 465-3428

SUBJECT: Enforcement of criminal trespass statutes in connection with concealed handguns



FROM: Dean J. Guaneli and Margot O. Knuth
Assistant Attorneys General
Criminal Division, Central Office

By memorandum dated December 21, 1994, you have requested advice as to whether a private business may bar from its premises someone who is carrying a concealed handgun and, if so, whether a person who nonetheless enters the business with a concealed handgun is guilty of a criminal offense. You have also requested advice as to whether a criminal offense is committed when a person carries a concealed handgun into a retail store that contains a branch office of a bank, in view of the new statute that prohibits concealed handguns from being carried into "financial institutions."

The Department of Law cannot provide legal advice to private parties, and consequently private businesses with questions about concealed firearms should contact their own legal advisors regarding their rights and liabilities for protecting patrons of their business and issues regarding employees of their business, civil actions for trespass[1] and general landlord and tenant matters.[2] Your question, however, is what action, if any, troopers should take when they receive a complaint about a person carrying a concealed handgun on private business premises. The following is our advice.

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[1] This memorandum addresses criminal trespass laws only and we express no opinion on the ability of private persons to maintain a civil suit for trespass. *See Brown Jug, Inc. v. International Brotherhood of Teamsters*, 688 P.2d 932, 937-38 (Alaska 1984) (in civil action, intentional entry onto land of another constitutes intentional trespass even if trespasser believes that he or she has the right to be on the land).

[2] This department has previously opined, in response to questions from the legislature, that a landlord has a right to prohibit firearms on leased property. 1983 Inf. Op. Att'y Gen. (Jul. 1; 366-444-83).

I. Summary

The short answer to your first question is that it may, depending on the circumstances, be illegal under the state criminal trespass statutes for a person to carry concealed handguns on private business premises, even though the person has a permit for the weapon. The short answer to your second question is that clear demarcation of bank premises and notice to patrons are important considerations in enforcing the concealed handgun law on bank premises within larger stores. Issues regarding automatic teller machines and other premises of financial institutions will be discussed below. Before reaching these issues, however, we will first discuss the impact of the newly-enacted concealed handgun statutes on state criminal trespass laws.

II. Discussion

A. The Concealed Handgun Statutes Do Not Prevent Private Property Owners From Relying On Criminal Trespass Laws To Control Access To Their Premises

Under AS 11.61.220, it is a crime for a person to carry a concealed handgun unless the person is a peace officer, is on the person's own property, is engaged in a lawful outdoor activity requiring a weapon for protection, or has obtained a permit under the new statutes set out in AS 18.65.700 — 18.65.790. Even if a person has obtained a permit to carry a concealed handgun, there are several types of places where these guns cannot be carried. AS 18.65.755(c) makes it a class B misdemeanor for a person with a permit to possess a concealed handgun in one of these legislatively designated areas.[3]

The first question that you have asked is whether there are any other premises that can be designated as off-limits for concealed handguns, even though they do not appear on the list of prohibited premises in AS 18.65.755. We believe that there are.

Alaska has a criminal trespass statute, AS 11.46.330, which makes it a crime to enter or remain on premises when a person is not privileged to do so or has been directed to leave. It provides as follows: "A person commits the crime of criminal trespass in the second degree if the person enters or remains unlawfully (1) in or upon premises; or (2) in a propelled vehicle." AS 11.46.330. AS 11.46.350 defines "enter or remain unlawfully" as meaning to "(1) enter or remain in or upon premises . . . when the premises . . . at the time of the entry or

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[3] These places include, among others: law enforcement or correctional facilities, school grounds, courthouses, certain governmental buildings, portions of airline terminals, and residences where an appropriate notice has been given by oral statement or by a conspicuous notice. AS 18.65.755.

remaining is not open to the public and when the defendant is not otherwise privileged to do so; [or] (2) fail to leave premises . . . that is open to the public after being lawfully directed to do so personally by the person in charge."

These statutes give property owners the right to exclude a person from their property for any reason. That reason can include carrying a concealed handgun, even with a permit, unless the concealed handgun permit laws are interpreted as somehow superseding this aspect of the criminal trespass laws. It is therefore necessary to consider whether the legislature's enactment of AS 18.65.755 impliedly repealed the criminal trespass statute (and any municipal ordinance prohibiting criminal trespass) as applied to the carrying of concealed handguns. As explained below, we do not believe that AS 18.65.755 prevents property owners from choosing to exclude persons carrying concealed handguns, even if the person has a permit, and, accordingly, those who enter or remain on property with a concealed handgun despite the owner's request that they leave can be prosecuted for criminal trespass.

To determine whether a prior statute has been impliedly repealed, Alaska's courts look to the intent of the legislature in passing the new statute to determine if there is an irreconcilable conflict between the two. *Peter v. State*, 531 P.2d 1263, 1268 (Alaska 1975). Although the supreme court will not automatically apply the common law presumption against implied repeals, the court has quoted from a well-respected commentator who notes that "[t]he presumption has . . . special application to important public statutes of long standing." *Id.* (quoting 1A J. Sutherland, *Statutes and Statutory Construction* § 23.10 (4th ed. Sands 1972)).

Criminal trespass laws are important public statutes that protect private property rights by allowing owners to choose who may enter or remain on their premises. Although there are limits on the extent to which private property owners can control free speech on portions of their premises that have become the functional equivalent of public property (*see, e.g., Pruneyard Shopping Center v. Robins*, 447 U.S. 74, 100 S. Ct. 2035, 64 L. Ed. 2d 741 (1980)), there are no similar limitations in Alaska law on the ability of businesses to prohibit firearms or smoking on the premises, or to require a dress code or otherwise require that patrons behave in a way that is believed by the business owner to be appropriate for operation of the establishment or for preserving the safety and comfort of other patrons.[4]

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[4] We note that the Alaska Constitution was recently amended to create an "individual" right to bear arms that is not to be infringed by state or local government. Art. I, § 19, Alaska Const. We conclude that this amendment does not prevent private persons from setting rules of conduct for their own property. For example, the Alaska Supreme Court has declared that ingesting substances (such as smoking tobacco) is constitutionally protected, *Gray v. State*, 525 P.2d 524 (Alaska 1974), as is choosing how to appear and what to wear, *Breese v. Smith*, 501 P.2d 159 (Alaska 1972). Nonetheless, private (continued...)

Also, criminal trespass laws have been part of Alaska society for many years. The present Model Penal Code formulation of the criminal trespass statute has been part of Alaska law since 1980, and earlier criminal trespass statutes were part of the Alaska criminal code since well before statehood.[5]

Given the importance and long history of these laws, it is probable that the Alaska courts would impose a presumption against the implied repeal of the criminal trespass statutes. Even if no presumption is applied, however, it is unlikely that a court would find that the concealed handgun statutes impliedly repealed the criminal trespass statutes to the extent of prohibiting businesses from excluding concealed handguns on their premises.

There is nothing on the face of the concealed handgun statutes in general, or in AS 18.65.755 in particular, that is inherently inconsistent with the criminal trespass statute set out in AS 11.46.330. The concealed handgun statutes create a detailed statutory scheme for obtaining permits to carry concealed handguns. They also create a large number of *new* offenses for carrying concealed handguns in certain designated areas or for misusing the permit. *See* AS 18.65.760; AS 18.65.765. The criminal trespass statute, on the other hand, gives private property owners the right to ensure that their property is used in the manner they choose. These purposes are not in conflict.[6] We accordingly conclude that AS 11.46.330, as applied to persons

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[4](...continued)
businesses indisputedly may ban smoking and impose dress codes. This is because the constitutional rights in Article I of the Alaska Constitution (like the Bill of Rights in the United States Constitution) are limitations on the power of government, rather than on the actions of private persons. *Luedtke v. Nabors Alaska Drilling, Inc.*, 768 P.2d 1123, 1129-30 (Alaska 1989).

[5] *See* former AS 11.20.610, AS 11.20.630 and AS 11.20.650. The Revised Criminal Code replaced these earlier, more specific laws with broader provisions so as to eliminate a "needless proliferation of statutes." *Alaska Criminal Code Revision*, Tentative Draft, Part 3, Offenses Against Property (April 1977) at 59.

[6] The legislative history of AS 18.65.755 discloses that an unsuccessful attempt was made in the House of Representatives to expand the list of prohibited premises to include retail establishments and other places that post signs prohibiting entrants from carrying concealed handguns. *See* Amendments 2 and 3 offered to CSHB 351(FIN) on April 15, 1994. House Journal at 3471-73 (1994). It is rarely appropriate to infer legislative intent from the defeat of a proposed amendment. Its defeat may mean only that legislators wanted to ensure that some areas would be off-limits to concealed handguns, regardless of whether a person carrying a concealed handgun noticed that a sign had been posted, while in other areas it is to be left to the discretion of the property owner whether to allow patrons to carry concealed handguns.

carrying concealed handguns, should not be interpreted as having been impliedly repealed by AS 18.65.755.[7]

B. Alaska's Criminal Trespass Laws

AS 11.46.330 makes it the crime of criminal trespass in the second degree, a class B misdemeanor, to "enter or remain unlawfully" in or upon land, buildings or propelled vehicles. Under AS 11.46.350, the phrase "enter or remain unlawfully" is defined to include

> (1) for premises *not open to the public*, entering or remaining "when the defendant is not otherwise privileged to do so"; and
>
> (2) for places *open to the public*, "fail[ing] to leave . . . after being lawfully directed to do so personally by the person in charge."

These two provisions differ slightly with regard to the type of notice that must be given to a person before that person may be deemed to have entered or remained unlawfully. We will first discuss places "*not* open to the public," and then places "*open* to the public."

1. Places Not Open to the Public

The primary elements of the crime of criminal trespass in the second degree, as applied to persons who carry concealed weapons into places that are *not* open to the public, are: (1) that the person knowingly entered or remained in the place with a concealed handgun, (2) that the person was not privileged to enter or remain in the place with a concealed handgun, and (3) that the person entered or remained with reckless disregard as to whether or not he or she was privileged to do so.

Whether a place is "not open to the public," for purposes of the criminal trespass statute, is a question ultimately to be decided by the factfinder in each specific criminal case and we accordingly will not attempt to try to list all the places that are "not open to the public." The term, however, almost certainly includes (1) private offices, (2) offices that require an

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[7] Our conclusion is bolstered by the analogy that can be made to the state's public drunkenness statutes. In *Peter v. State*, the Alaska Supreme Court held that the Uniform Alcoholism and Intoxication Treatment Act in AS 47.37 impliedly repealed Alaska's drunk-in-public law. The court found that the legislature's *expressed* intent in adopting the Uniform Act was to stop criminally punishing drunks and to rehabilitate them instead. 531 P.2d at 1271. This holding, however, has no impact on the ability of business owners to invoke the criminal trespass laws against drunks who are asked to leave the premises and refuse to do so.

appointment (such as doctor or dentist offices), (3) places reserved for residents or authorized guests of residents (such as nursing homes),[8] (4) places for employees or authorized personnel only, (5) places that are limited to only members or authorized guests of members (such as members-only stores or clubs), and (6) premises that are normally open to the public, but closed for special occasions (for example, restaurants closed for a "private party"). *Johnson v. State*, 739 P.2d 781, 783 n.1 (Alaska App. 1987).

The simplest element of the offense of criminal trespass is whether the person knowingly entered or remained on the premises. Unless a person has entered a place by mistake, or for some reason is unaware of his or her location, this element can easily be proven.[9]

Assuming that a person has a permit to carry a concealed handgun, whether that person is privileged to carry the gun onto premises that are not open to the public depends on the policies of the office, theater, sporting event, or other premise operator. The prohibition against bringing guns onto the premises must be an official policy of the organization or be imposed by someone managing the premises.[10]

Whether or not a person entered or remained in reckless disregard of a lack of privilege depends on the type of notice provided. Although the statutory definition of "reckless" in AS 11.81.900(a) requires only awareness and disregard of a *risk* that the circumstance (in this case, a lack of privilege) exists, most juries will likely want proof that the person actually *knew* he or she was prohibited from carrying a concealed handgun on the premises.

The strongest evidence that a person knew he or she was not allowed to enter or remain on the premises with a concealed handgun is if the property manager or an agent of the manager provides this information to the person in a face-to-face conversation or by telephone.

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[8] *But see Steele v. Breinholt*, 747 P.2d 433 (Utah App. 1987), in which the issue of whether a nursing home was open to a particular visitor was deemed to be question of fact for the jury.

[9] In most instances, a person both enters and remains either with or without the permission of the property owner. In some cases, however, a person may initially enter with the permission of the owner but thereafter lose that permission.

[10] There is nothing, however, that precludes an organization from applying different rules at different times. For example, an arena or convention center may choose to allow guests to carry firearms, including concealed handguns, at a gun collectors show, but prohibit concealed weapons at a rock concert. It is also permissible for an organization to allow peace officers or other authorized persons (such as security guards) to carry concealed handguns, but prohibit other persons from carrying them.

Proof of a written communication of this information would also establish the fact. For example, in *Johnson v. State*, 739 P.2d 781 (Alaska App. 1987), the court upheld a criminal trespass conviction against a skier on the basis of a letter that the Alyeska Ski Resort had written to him, barring him from the resort for the remainder of the season because of the danger posed by his reckless conduct.

Alternatively, a business may communicate the information by placing a placard at each of its entrances. The Alaska Statutes specify the size and contents of a notice against trespass in AS 11.46.350(c).[11] The notice must be "printed legibly in English," be "at least 144 square inches in size," contain "the name and address of the person under whose authority the property is posted and the name and address of the person who is authorized to grant permission to enter the property," and be "placed at each . . . way of access onto the property. "AS 11.46.350(c)(1) -- (4).[12]

There may, however, be circumstances under which a posted notice described in AS 11.46.350(c) may not be visible enough and therefore it will be difficult to prove that the entrant had actual knowledge. For example, persons seeking admission to a crowded auditorium may not be able to see a sign of the statutory minimum 144 square inches (12 inches by 12 inches). Or a person who enters an office or a "members-only" store for the first time may not notice a small sign. In these situations, one option would be for the business to increase the size of the sign.

In terms of the content of the notice, the following is an example of language that might be used:

NO CONCEALED HANDGUNS

EVEN IF YOU HAVE A PERMIT

Violators will be arrested and prosecuted.
This warning does not apply to peace officers
or authorized security personnel.

John Doe, Manager, P.O. Box 123
Anchorage, Alaska 99501

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[11] AS 11.46.350 was enacted with other statutes in ch. 168, SLA 1988, dealing with trespasses to unoccupied land. Its terms, however, are not explicitly limited to unoccupied land.

[12] *See also* AS 18.65.755, setting out similar requirements for the posting of notice by homeowners that permittees are prohibited from bringing concealed handguns into their homes.

Organizations that wish to preclude firearms generally should use the phrase "no firearms" instead of "no concealed handguns."

There are a myriad of alternative means that may be used by businesses to provide the necessary notice. For example, a business may decide to give out handbills to persons entering the establishment. A similar notice could be given at the time a ticket is purchased or an application for membership is obtained. Alternatively, in theaters, sporting events, or members-only stores, it would seem to be a simple matter to print a written warning (similar to the sample sign set out above) directly on the admission ticket or membership card.

It would be difficult to list all the ways in which the necessary notice can be given, and it is impossible to predict all of the defenses that might be raised by persons claiming they were unaware that they did not have a privilege to possess firearms on the premises. State troopers investigating cases of trespass will have to determine whether, based on all the circumstances, there is evidence establishing that the person was aware of the prohibition.

2. Places Open to the Public

The primary elements of the crime of criminal trespass in the second degree, as applied to persons who carry concealed weapons into places that *are* open to the public, are: (1) that the person knowingly entered or remained in a place with a concealed handgun, (2) that the person was directed to leave personally by the person in charge or someone authorized by the person in charge, and (3) that the person recklessly disregarded the lawful order not to remain. *Johnson v. State*, 739 P.2d at 783-84.

Again, the element of whether the person knowingly entered or remained in the place is easily proven.

The second element, that the person was "directed to leave personally," is more difficult. A prosecution cannot easily be based on notice provided solely by a sign posted at an entryway. Notice, however, will be sufficient if the business owner, or the person in charge, acts through an agent to provide actual notice. *Cleveland v. Municipality of Anchorage*, 631 P.2d 1073, 1077 (Alaska 1981). As before, a face-to-face or telephone conversation is the clearest example of personal notice. It is likely that most cases of criminal trespass that require trooper involvement will occur *after* a person has been told not to bring a firearm into an establishment. This advisement should be deemed to remain in effect until rescinded.

As in *Johnson*, a letter directed to the person will also suffice under this subsection of the criminal trespass statute. Similarly, a handbill given to an entrant will also be

sufficient. The adequacy of other types of personal directions (for example, an announcement made over a loudspeaker) will depend on the circumstances.

If there is sufficient evidence that the person was personally directed to leave, then there should be no problem proving the final element, that the person recklessly disregarded that direction. The lawfulness of an order to leave — like other legal issues — would seem to be a question for a judge, rather than a question of fact for the jury to decide.[13]

C. The Defense of "Necessity" Is Not Available

Persons who carry concealed handguns often claim they are doing so for purposes of self-defense. It is foreseeable that a person charged with criminal trespass may try to raise the defense of "necessity." Thus, for example, a defendant charged with criminal trespass for refusing to leave premises when asked to do so by an owner who objects to the presence of concealed weapons may argue that his "need" to carry a concealed handgun outweighs the owner's interest in barring the presence of such weapons on the premises.

The defense of "necessity" is governed in Alaska by the common law and by AS 11.81.320. In accordance with these authorities, it is only rarely, if ever, that the defense of necessity will justify a person's possession of a concealed handgun on premises where such possession is prohibited by the owner.[14] *See Cleveland v. Municipality of Anchorage*, 631 P.2d 1073 (Alaska 1981) (defense of necessity to "preserve life" rejected in trespass case arising from

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[13] *But see Johnson v. State*, 739 P.2d 781 (Alaska App. 1987), in which the court indicated that the lawfulness of the order was a "circumstance" in the case that the jury could review. It is not clear what the *Johnson* court meant by this. The court observed that, under the facts in that case, the defendant could claim he was not reckless because he reasonably questioned the "validity" of a warning letter. We believe that the technical lawfulness of an order is a question for a judge to decide. *Johnson*, however, suggests that the reasonableness of the defendant's belief with respect to that order is a question for the jury. In the rare case in which there may be a question about the legality of an order to leave (*e.g.*,a property owner changes the terms of a lease in the middle of the tenancy), a judge would be the more appropriate one to decide the issue than a jury.

[14] It is at least theoretically possible for a "necessity" defense to arise if, for example, a person with a concealed weapon were chased by attackers into a prohibited area. In the unlikely event that the person were prosecuted for trespass for entering the prohibited area, a defense of "necessity" or perhaps duress would be applicable. Note, however, that prisoners who escape can raise a defense of "necessity" if they were in danger in prison, but they must then turn themselves in and inform authorities immediately, or else justify their continuing absence. *Wells v. State*, 687 P.2d 346 (Alaska App. 1984). Like escape, criminal trespass is a continuing offense that would have to be justified.

defendant's refusal to leave an abortion clinic); *Bird v. Municipality of Anchorage,* 787 P.2d 119 (Alaska App. 1990) (abortion clinic trespass case). Nonetheless, we recommend that the investigating officer provide a suspect with the opportunity to explain why the suspect thought it was necessary to carry a concealed handgun onto the premises in contravention of the owner's explicit directions.

D. "Financial Institutions" under AS 18.65.755

Under AS 18.65.755(a)(11), a person with a permit to carry a concealed handgun is prohibited from carrying the gun "into . . . a financial institution." The statute defines "financial institution" as a "bank, savings bank, savings association, credit union, or other institution regulated by the Department of Commerce and Economic Development under AS 06."

You have asked whether a branch office of a financial institution fits within the prohibition of AS 18.65.755(a)(11) when the branch office is located within a larger retail store that is not a "financial institution." We conclude that a branch office of a bank is a financial institution under AS 18.65.755. This, however, does not mean that the entire retail store enclosing the branch office automatically becomes a financial institution for purposes of the prohibition set out in the concealed handgun law.

If the bank branch office is physically separated from the remainder of the store by walls or other barriers, then the statutory prohibition against carrying concealed handguns into a financial institution applies to that separate area, but not to the surrounding store. If the branch office is not physically separated from the remainder of the store, we believe that the prohibition set out in AS 18.65.755 applies only to those areas where a patron of the bank deals face-to-face with a bank employee, or in those waiting areas where patrons of the bank congregate or line up to wait to see a bank employee. In either situation, it is advisable for notice (through use of a sign or one of the other means discussed above) to be provided to the customers of the bank that concealed handguns or firearms are not allowed in that area.

A related question is whether drive-up teller windows, outdoor automatic teller machines, and bank parking lots are included within the term "financial institution" for purposes of AS 18.65.755. We believe that drive-up teller windows and automatic teller machines fall within the ambit of that term, while bank parking lots do not.

This, however, does not end the inquiry. For purposes of AS 18.65.755(a)(11), the key question about drive-up teller windows and outdoor automatic teller machines is whether the person using that service has come "into" a financial institution. We conclude that a person who uses a drive-up teller window has not entered "into" a financial institution. Similarly, a person who uses an outdoor automatic teller machine, even one that is connected to a bank, has

not entered "into" the bank itself. On the other hand, if the automatic teller machine is located inside bank premises, or in a foyer or other entry to the bank, a person who uses such a machines has entered "into" the institution.

If a financial institution reports that a person is carrying a firearm in a parking lot or when using a drive-up window or outdoor automatic teller machine, then the state troopers may take action if the elements of the offense of criminal trespass have been met, as discussed in earlier sections of this memorandum (*e.g.*, notice has been provided to the patron, etc).

III. Conclusion

For the reasons set out in this memorandum, we conclude that the state's criminal trespass laws can be used to arrest and prosecute a person who possesses a concealed handgun on private business premises, even if the person has obtained a permit for the concealed weapon, if the owner or management of the business has provided notice that concealed handguns (or all firearms) are prohibited on the premises.

We also conclude that a branch office of a bank that is located in a retail store is a financial institution under AS 18.65.755. If the branch office in the retail store has been physically separated from the rest of the store, through the use of walls or other types of dividers, then AS 18.65.755 prohibits a person from carrying a concealed weapon into the area. It is not a violation of AS 18.65.755, however, to carry concealed handguns to drive-up teller windows, outdoor automatic teller machines, or bank parking lots, although this conduct might constitute criminal trespass if all of the elements of that offense can be proven.

Please contact this office if you have further questions.

DJG/MOK/jf

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APR 28 1997

April 16, 1997

Senators Bert Sharp & Drue Pearce, Co-Chairs
Senate Finance Committee
c/o Rm. 518, State Capitol
Juneau, Alaska 99801-1182

Dear Senators:

Please consider the following to be testimony before April 18, Senate Finance Committee Hearing on Senate Bill-141.

Senate Bill 141 was introduced in recognition of the dependability of Alaskans who have secured concealed handgun carry permits and to streamline Alaska Law as it applied to carrying handguns under permits.

A principle feature of the bill is that it corrects the inconsistency that permit holders who have submitted to training, fingerprinting, and background checks may not legally carry concealed in places, such as financial institutions, where any legal handgun owner can carry openly.

Additionally it reduces the cost to Alaskans in securing and renewing a permit to the cost incurred in processing concealed handgun carry applications. There should be no additional costs to the State of Alaska.

I urge passing SB-141 out of the Senate Finance Committee.

Sincerely,

Robert H. Parkerson Ph: (907) 745-4358
HC 02, Box 7630-A1
Palmer, Alaska 99645.

SB 141 "Concealed Handgun Permit Revisions" Index:

Revised 3/25/97 COPIES IN MEMBER FILES

1. Sponsor Statement.
2. Sectional Summary of SB 141.
3. Leg. Legal: Persons Prohibited from Possessing Firearms under Federal and State.
4. Alaska Statute. 18.65.70 - 18.65.790.
5. Right to Carry Fact Sheet.
6. Firearms Fact Card.
7. Gun-Free School Zones Act of 1996.
8. USA Today Article, Study: Weapons Laws Deter Crime and other articles.
9. Letter from Governor Knowles to Senator Pearce. Re: Notice of Veto of CSSB 177.
10. Letter from Governor Knowles to Robert H. Parkerson, PH.D.
11. Leg. Legal, July 29, 1996 Memo from Jack Chenoweth to Senator Lyda Green. Possession of Concealed Weapons.
12. Leg. Legal August 1, 1996 Memo from Jack Chenoweth to Senator Lyda C[illegible] Concealed Handguns.
13. Alaska State Firearms Laws.
14. The Founding Fathers: On the Individual Right to Keep and Bear Arms.
15. Armed Citizens and Police Officers.
16. "Gun Control isn't About Guns, It's About Control" by Mark E. Howerter.
17. "Ten Myths about Gun Control".
18. FBI National Press Office. Statistics About Crime and Victims.
19. Selections from Preventing Violence Against Women and Children. Ronald B. Taylor.
20. 1997 Articles on SB 141.
21. Letters of Support and Opposition concerning SB 141.
22. Alaska Statute and Regulation Re: Prohibition in Bars.
23. Legislative Legal: When and where can concealed weapons, particularly handguns, may be carried under Alaska law without a concealed handgun permit.
24. Alaska Statute 11.56.370 - 11.56.510.
25. United States Code 922. Federal Aid Restrictions.
26. Tennessee Law Review.
27. Alaska Court System. Office of the Administrative Director. Administrative Bulletin No. 30
28. Alaska Constitution. Article IV, Section 15. Court Rule-Making Power.
29. Memorandum from Dean J. Guaneli and Margot O. Knuth to Ronald L. Otto. Subject: Enforcement of criminal trespass statutes in connection with concealed handguns.

AVAILABLE FROM FINANCE COMMITTEE SECRETARY

MAKE AVAILABLE TO MEMBERS & STAFF UPON REQUEST (ORIGINALS)

State of Alaska

(b) With funds appropriated for that purpose, the commissioner of public safety shall provide grants to nonprofit regional corporations for village public safety officers.

(c) The commissioner of public safety may adopt regulations related to village public safety officers, including minimum standards and training, criteria for community or corporation participation, and the interaction between the Department of Public Safety and village public safety officers. (§ 1 ch 48 SLA 1993)

Article 9. Permit to Carry a Concealed Handgun.

Section
700. Permit to carry a concealed handgun
705. Qualifications to obtain a permit
710. Application for permit to carry a concealed handgun
715. Demonstration of competence with handguns
720. Fees
725. Permit renewal
730. Replacement of permit
735. Suspension of permit
740. Revocation of permit; appeal
745. No liability for issuance of permit or for training
750. Possession and display of permit
755. Places where permittee may not possess a concealed handgun
760. Misuse of a permit
765. Responsibilities of the permittee
770. Access to list of permittees by peace officers
775. Regulations
778. Municipal preemption
780. Prohibition of possession of concealed handguns
785. Procedure for local option elections
790. Definitions

Sec. 18.65.700. Permit to carry a concealed handgun. (a) The department shall issue a permit to carry a concealed handgun to a person who

(1) applies in person at an office of the Alaska State Troopers;

(2) qualifies under AS 18.65.705;

(3) submits a completed application on a form provided by the department, that provides the information required under AS 18.65.705 and 18.65.710 and is executed under oath;

(4) submits two complete sets of fingerprints on Federal Bureau of Investigation approved fingerprint cards that are of sufficient quality so that the fingerprints may be processed; the fingerprints must be taken by a person, group, or agency approved by the department; the department shall maintain a list of persons, groups, or agencies approved to take fingerprints and shall provide the list to the public upon request;

(5) submits evidence of competence with handguns as provided in AS 18.65.715;

(6) provides two frontal view color photographs of the person taken within the preceding 30 days that include the head and shoulders of the person and are of a size specified by the department;

(7) shows a valid Alaska driver's license or identification card at the time of application;

(8) does not suffer a physical infirmity that prevents the safe handling of a handgun; and

(9) pays the application fee required by AS 18.65.720.

(b) The department shall either approve or reject an application for a permit to carry a concealed handgun under (a) of this section within 15 days of receipt of permit eligibility information from the Federal Bureau of Investigation or other agency necessary to make a determination concerning the application. The department shall request permit eligibility information under this subsection within five days of the receipt of the application. The department shall notify the applicant in writing of the reason for a rejection.

(c) A person whose application is rejected under this section may appeal the rejection decision to the commissioner. A person may seek judicial review of the decision of the commissioner under AS 44.62.560 — 44.62.570.

(d) A permit issued under (a) of this section is valid for five years from the date of issue. The permit must specify the action types and maximum calibers of handgun described in the permittee's certificate of competency under AS 18.65.715 but may not specifically identify a handgun by make, model, or serial number. (§ 4 ch 67 SLA 1994)

Sec. 18.65.705. Qualifications to obtain a permit. A person is qualified to receive and hold a permit to carry a concealed handgun if the person

(1) is 21 years of age or older;

(2) is eligible to own or possess a firearm under the laws of this state and under federal law;

(3) has not been convicted of and is not currently charged under a complaint, information, indictment, or presentment with a felony under the laws of this state or a similar law of another jurisdiction;

(4) has not been convicted, within the five years immediately preceding the application, of, and is not currently charged under a complaint, information, indictment, or presentment with, any of the following misdemeanor offenses or similar laws of another jurisdiction:

(A) AS 11.41.230, 11.41.250, 11.41.270;

(B) AS 11.46.315, 11.46.320, 11.46.330, 11.46.430, 11.46.484;

(C) AS 11.51.130;

(D) AS 11.56.330, 11.56.350, 11.56.380, 11.56.545, 11.56.700, 11.56.710, 11.56.740, 11.56.780, 11.56.790, 11.56.800, 11.56.805;

(E) AS 11.61.110, 11.61.120, 11.61.210, 11.61.220, 11.61.240; or

(F) AS 11.71.050, 11.71.060;

(5) has not been convicted of two or more class A misdemeanors of this state or similar laws of another jurisdiction within the five years immediately preceding the application;

(6) has not within the 10 years immediately preceding the application been adjudicated a delinquent for a felony offense of this state or another jurisdiction;

(7) is not now suffering, and has not within the five years immediately preceding the application suffered, from a mental illness as defined in AS 47.30.915;

(8) has not been adjudicated as mentally incapacitated by a court of this state, another state, territory, or jurisdiction, or of the United States, unless the guardianship or similar arrangement has been closed or terminated and five years have elapsed since the closure or other termination;

(9) is a resident of the state and has been for the one year immediately preceding the application for a permit;

(10) has not been discharged from the armed forces of the United States under dishonorable conditions;

(11) is not an alien who is residing in the United States illegally or a former citizen of the United States who has renounced the person's citizenship;

(12) is not an unlawful user of, or addicted to, a controlled substance;

(13) is not now the subject of an injunction under AS 25.35.010 — 25.35.020 unless the injunction has been dissolved or has expired;

(14) is not now in and has not in the three years immediately preceding the application been ordered by a court to complete an alcohol treatment program;

(15) is not now in and has not in the three years immediately preceding the application entered a substance abuse treatment program; and

(16) has demonstrated competence with handguns as provided in AS 18.65.715. (§ 4 ch 67 SLA 1994)

Sec. 18.65.710. Application for permit to carry a concealed handgun. (a) The application for a permit to carry a concealed handgun must contain the following information:

(1) the applicant's name, physical residence, mailing address, place and date of birth, physical description, including height, weight, race, hair color, and eye color, Alaska driver's license or identification card number, and the city and state of each place the applicant has resided in the five years immediately preceding the application;

(2) a statement that the applicant qualifies under AS 18.65.705;

(3) a statement that the applicant has been furnished with a copy of AS 18.65.700 — 18.65.790, has read those sections, and understands them;

(4) a statement that the applicant desires a permit to carry a concealed handgun for a lawful purpose, which may include self-defense;

(5) a sworn statement by the applicant that all statements, answers, and attachments to the application are true and complete;

(6) a conspicuous warning that the application is executed under oath and that an applicant who supplies a false statement, answer, or

document, in connection with the application that the applicant does not believe to be true, may be prosecuted for perjury under AS 11.56.200 and, if found guilty, may be punished for violation of a class B felony, and that in such cases the permit shall be revoked and the applicant may be barred from any further application for a permit; and

(7) a statement that the applicant understands that a permit eligibility investigation will be conducted as a part of the application process, that this may involve computerized records searches, and that the applicant authorizes the investigation.

(b) An application under (a) of this section may not inquire of an applicant about or require the submission of information beyond that described in that subsection. As part of an application under (a) of this section, the department may not inquire of an applicant as to any firearms owned by the applicant. (§ 4 ch 67 SLA 1994)

Sec. 18.65.715. Demonstration of competence with handguns. (a) An applicant for a permit to carry a concealed handgun shall provide a certificate of successful completion of a handgun course that is approved by the department. The certificate must state the action type and caliber of handgun or handguns the applicant has demonstrated competence with and that the applicant may be permitted to carry. A permittee may only carry as a concealed handgun an action type of handgun described in the certificate. A permittee may only carry as a concealed handgun the caliber of the action type that the permittee demonstrated competence with or any lesser caliber of the same action type. The handgun course must have been completed within the 12 months immediately preceding the application. The department shall approve a handgun course, including the personal protection course offered by the National Rifle Association, if the course tests the applicant's

(1) knowledge of Alaska law relating to firearms and the use of deadly force;

(2) familiarity with the basic concepts of the safe and responsible use of handguns;

(3) knowledge of self-defense principles; and

(4) physical competence with each action type of handgun the applicant wishes to carry under the permit and the maximum caliber for each action type the applicant wishes to carry under the permit.

(b) At the time the permittee renews a permit under AS 18.65.725, the permittee shall provide a certificate of successful completion of a handgun course approved by the department under (a) of this section. The handgun course required under this subsection must be completed in the 12 months immediately preceding the renewal.

(c) The department may not require a certificate of competence submitted under this section to contain any specifically identifying infor-

mation, including make, model, or serial number, of a handgun with which an applicant or permittee has demonstrated competence.

(d) The department shall maintain a list of approved courses and shall provide the list to the public upon request. (§ 4 ch 67 SLA 1994)

Sec. 18.65.720. Fees. The department shall charge a nonrefundable fee for the processing of the application for and initial issuance of a permit, renewal of a permit, or replacement of a permit. The fees shall be set by regulation and must be based on the actual costs incurred by the department. However, the fee for the processing of an application and initial issuance of a permit may not exceed $125 and the fee for renewal of a permit or replacement of a permit may not exceed $60. (§ 4 ch 67 SLA 1994)

Sec. 18.65.725. Permit renewal. (a) A permittee shall apply in person for renewal of a permit to carry a concealed handgun within 90 days before the expiration of the permit and shall present a complete renewal form provided by the department. The renewal form shall be submitted under oath and must include

(1) any change in the information originally submitted under AS 18.65.710;

(2) a statement that the person remains qualified to receive and hold a permit to carry a concealed handgun under AS 18.65.705;

(3) a certificate of successful completion of a handgun course within the 12 months immediately preceding the renewal;

(4) two frontal view photographs of the person taken within the preceding 30 days that include the head and shoulders of the person and are of a size specified by the department; and

(5) the renewal fee required under AS 18.65.720.

(b) The department shall take a single thumb or fingerprint from the permittee to compare against the fingerprints originally submitted with the application.

(c) A renewal of a permit to carry a concealed handgun submitted on or after the expiration date is subject to a late fee of $25. The department may not accept a renewal for a permit that is submitted more than 30 days after the expiration date of the permit. Nothing in this subsection prohibits the holder of an expired permit from applying for a new permit.

(d) A renewal form under (a) of this section may not inquire of a permittee about, or require the submission of, information beyond that described in (a) of this section. (§ 4 ch 67 SLA 1994)

Sec. 18.65.730. Replacement of permit. The department may replace a permit that the permittee certifies under oath has been lost, stolen, or destroyed, provided the permittee applies in person and

(1) provides two frontal view photographs of the permittee taken within the preceding 30 days that include the head and shoulders and are of a size specified by the department;

(2) submits to the taking of a single thumb or fingerprint by the department to compare against the fingerprint originally submitted with the application; and

(3) pays the replacement fee required under AS 18.65.720. (§ 4 ch 67 SLA 1994)

Sec. 18.65.735. Suspension of permit. (a) The department shall immediately suspend a permit to carry a concealed handgun if a permittee is arrested for or formally charged with a crime that would disqualify the permittee under AS 18.65.705(3) — (4) from being eligible for a permit to carry a concealed handgun or is the subject of an injunction under AS 25.35.010 — 25.35.020. A suspension of a permit remains in effect until the permit is revoked under AS 18.65.740, the department has been notified of a disposition favorable to the defendant or the defendant has been released from custody without being charged, or the injunction under AS 25.35.010 — 25.35.020 is dissolved or expires without being renewed. In this subsection, "disposition favorable to the defendant" means a dismissal by the prosecutor or an adjudication by a court other than a conviction or a suspended imposition of sentence.

(b) A person whose permit is suspended under this section shall immediately surrender the permit to the nearest peace officer. A peace officer receiving a permit under this section shall immediately forward the permit to the department.

(c) The department shall retain a permit suspended under this section until the permit is revoked or returned to the permittee. (§ 4 ch 67 SLA 1994)

Sec. 18.65.740. Revocation of permit; appeal. (a) A permit to carry a concealed handgun shall be immediately revoked by the department when the permittee

(1) becomes disqualified to receive and hold a permit under AS 18.65.705;

(2) is convicted of two class A misdemeanors of this state or similar laws of another jurisdiction within a five-year period if at least one of the convictions occurs after the application;

(3) knowingly supplied a false or fraudulent answer, statement, or document, or made a material misstatement or omission, in connection with an application for a permit or renewal or replacement of a permit.

(b) A person whose permit is revoked under (a) of this section shall immediately surrender the permit to the nearest peace officer. A peace officer receiving a permit under this section shall immediately forward the permit to the department.

(c) A person whose permit is revoked under this section may appeal the revocation decision to the commissioner. A person may seek judicial review of the decision of the commissioner under AS 44.62.560 — 44.62.570.

(d) A person whose permit is revoked may not apply for a permit until at least five years after the revocation. (§ 4 ch 67 SLA 1994)

Sec. 18.65.745. No liability for issuance of permit or for training. (a) The state, and its officers and employees, are not liable by virtue of having issued a permit to carry a concealed handgun for damage or harm caused by the permittee.

(b) A person who provides firearm training to a person who receives a permit under AS 18.65.700 — 18.65.790 is not liable for damage or harm caused by the permittee. (§ 4 ch 67 SLA 1994)

Sec. 18.65.750. Possession and display of permit. (a) A permittee shall carry the permit at all times the permittee carries a concealed handgun. The permittee shall display both the license and other proper identification when asked to do so by a peace officer at any time.

(b) Whenever a permittee who is carrying a concealed handgun is contacted by a peace officer, the permittee shall immediately inform the peace officer that the permittee is carrying a concealed handgun under the permit.

(c) During a contact with a permittee, a peace officer may secure a handgun, or direct that it be secured, during the duration of the contact if the peace officer determines that the action is necessary for the safety of any person, including the peace officer, present. The permittee shall submit to the securing of the handgun.

(d) In this section, "contacted by a peace officer" means stopped, detained, questioned, or addressed in person by the peace officer for an official purpose.

(e) A person who violates (a) of this section is guilty of a violation and upon conviction may be punished by a fine of not more than $100.

(f) A person who violates (b) or (c) of this section is guilty of a class A misdemeanor. (§ 4 ch 67 SLA 1994)

Sec. 18.65.755. Places where permittee may not possess a concealed handgun. (a) A permittee may not carry a concealed handgun into

(1) a law enforcement or correctional facility;

(2) or on school grounds or a school bus; in this paragraph, "school grounds" has the meaning given in AS 11.71.900;

(3) a courthouse or a courtroom of this state, unless the permittee

(A) is a judge; or

(B) has been authorized to possess a concealed handgun by a judge presiding at that courthouse or courtroom;

(4) a building housing only state or federal offices or the offices of a political subdivision of the state, except as authorized under (3) of this subsection;

(5) an office of the state, federal government, or of a political subdivision of the state that is not located in a building described in (4) of this subsection;

(6) a passenger loading or unloading area of an airline terminal;

(7) a vessel of the Alaska marine highway system;

(8) a facility providing services to victims of domestic violence or sexual assault;

(9) a residence where notice that carrying a concealed handgun is prohibited has been given by the posting of a conspicuous notice or by oral statement by the resident to the permittee;

(10) a meeting of a business, charitable, or other organization or entity where notice that carrying a concealed handgun is prohibited has been given by the posting of conspicuous notice;

(11) a financial institution; in this paragraph, "financial institution" means a bank, savings bank, savings association, credit union, or other institution regulated by the Department of Commerce and Economic Development under AS 06;

(12) another place where the possession of a deadly weapon or firearm is prohibited by law; or

(13) a municipality or established village that has prohibited the possession of concealed handguns by a permit under AS 18.65.780 — 18.65.785.

(b) In (a) of this section, the posting of a conspicuous notice is satisfied if the notice

(1) is printed in legible English;

(2) is at least 144 square inches in size;

(3) contains the name and address of the person under whose authority the notice is posted; and

(4) is posted at each entrance to the residence or place where a meeting is being held.

(c) In addition to any other penalty provided by law, a person who violates this section is guilty of a class B misdemeanor. (§ 4 ch 67 SLA 1994)

Cross references. — For prohibition on possessing a loaded firearm in a place where alcohol is sold for consumption, see AS 11.61.220(a)(2); for prohibition on possession of a firearm when impaired by an intoxicating liquor or controlled substance, see AS 11.61.210(a)(1).

Sec. 18.65.760. Misuse of a permit. (a) The holder of a permit issued under AS 18.65.700 — 18.65.790 may not

(1) alter the permit;

(2) allow another person to use the permit;

(3) possess or display a suspended or revoked permit; or

(4) display an expired permit.

(b) A person who violates (a)(1) — (3) of this section is guilty of a class A misdemeanor.

(c) A person who violates (a)(4) of this section is guilty of a violation and upon conviction may be punished by a fine of not more than $100. (§ 4 ch 67 SLA 1994)

Sec. 18.65.765. Responsibilities of the permittee. (a) The holder of a permit issued under AS 18.65.700 — 18.65.790

(1) shall notify the department of a change in the permittee's address within 30 days;

(2) shall immediately report a lost, stolen, or illegible permit to the department;

(3) shall immediately notify the department if the holder is no longer qualified to hold a permit under AS 18.65.705; and

(4) may only carry a concealed handgun of the action type and caliber the holder has demonstrated competency with or of any lesser caliber of the same action type as authorized in the permit issued under AS 18.65.700.

(b) A person who violates this section is guilty of a violation and upon conviction may be punished by a fine of not more than $100. (§ 4 ch 67 SLA 1994)

Sec. 18.65.770. Access to list of permittees by peace officers. The department shall compile a list of permittees in a manner that allows immediate access to the information by peace officers. The list of permittees and all applications, permits, and renewals are not public records under AS 09.25.110 — 09.25.125 and may only be used for law enforcement purposes. (§ 4 ch 67 SLA 1994)

Sec. 18.65.775. Regulations. The department shall adopt regulations to implement AS 18.65.700 — 18.65.790. This section does not delegate to the department the authority to regulate or restrict the issuing of permits beyond those provisions contained in AS 18.65.700 — 18.65.790. (§ 4 ch 67 SLA 1994)

Sec. 18.65.778. Municipal preemption. A municipality may not restrict the carrying of a concealed handgun by permit under AS 18.65.700 — 18.65.790 except as provided in AS 18.65.780 — 18.65.785. (§ 4 ch 67 SLA 1994)

Sec. 18.65.780. Prohibition of possession of concealed handguns. (a) The following question, appearing alone, may be placed before the voters of a municipality or an established village in accordance with AS 18.65.785:

Shall the possession of concealed handguns by permit in .... (name of municipality or village) be prohibited?

[ ] Yes [ ] No.

(b) If a majority of the voters vote "yes" on the question set out in (a) of this section, the department shall be notified immediately after certification of the results of the election, and so long as the prohibition remains in effect, a person may not possess a concealed handgun with a permit issued under AS 18.65.700 — 18.65.790 in the municipality or the established village. (§ 4 ch 67 SLA 1994)

Sec. 18.65.785. Procedure for local option elections. (a) The local governing body of a municipality, whenever a number of registered voters equal to at least 10 percent of the number of votes cast at the last regular municipal election petition the local governing body to do so, shall place upon a separate ballot at the next regular election or at a special election the question set out in AS 18.65.780 that is the subject of the petition. The local governing body shall conduct the election in accordance with the election ordinance of the municipality.

(b) The lieutenant governor, whenever 10 percent of the registered voters residing within an established village petition the lieutenant governor to do so, shall place upon a separate ballot at a special election the question set out in AS 18.65.780 that is the subject of the petition. The lieutenant governor shall conduct the election in the manner prescribed by AS 15 (Alaska Election Code).

(c) Notwithstanding another provision of law, an election under (a) or (b) of this section relating to the possession of concealed handguns by permit under AS 18.65.780 may not be conducted more than once every 12 months.

(d) AS 29.26.110 — 29.26.160 apply to a petition under (a) of this section in a general law municipality except the

(1) number of required signatures is determined under (a) of this section rather than under AS 29.26.130;

(2) application filed under AS 29.26.110 must contain the question set out under AS 18.65.780 rather than containing an ordinance or resolution;

(3) petition must contain the question set out under AS 18.65.780 rather than material required under AS 29.26.120(a)(1) and (2). (§ 4 ch 67 SLA 1994)

Sec. 18.65.790. Definitions. In AS 18.65.700 — 18.65.790,

(1) "commissioner" means the commissioner of public safety;

(2) "competence" means the ability to place in a life size silhouette target

(A) seven out of 10 shots at seven yards;

(B) six out of 10 shots at 15 yards;

(3) "concealed handgun" means a firearm, that is a pistol or a revolver, and that is covered or enclosed in any manner so that an observer cannot determine that it is a handgun without removing it from that which covers or encloses it or without opening, lifting, or removing that which covers or encloses it; however, "concealed handgun" does not include a shotgun, rifle, derringer or other miniature handgun, or a prohibited weapon as defined under AS 11.61.200; in this paragraph,

(A) "derringer" means a handgun that has individual barrels for each cartridge it is capable of firing and lacks a manufacturer's installed trigger guard that completely encircles the trigger and which is part of the frame; and

(B) "miniature handgun" means a handgun that has a barrel length of three and one-half inches or less and lacks a manufacturer's installed trigger guard that completely encircles the trigger and which is part of the frame;

(4) "department" means the Department of Public Safety;

(5) "established village" has the meaning given in AS 04.21.080;

(6) "local governing body" has the meaning given in AS 04.21.080;

(7) "permit" means a permit to carry a concealed handgun issued under AS 18.65.700 — 18.65.790. (§ 4 ch 67 SLA 1994)

Chapter 66. Council on Domestic Violence and Sexual Assault.

Section

10. Council on domestic violence and sexual assault; purpose
20. Membership, terms, vacancies, and disqualification
30. Compensation and expenses
40. Meetings and quorum
50. Duties of the council
60. Qualifications for grants and contracts
900. Definitions

Sec. 18.66.010. Council on domestic violence and sexual assault; purpose. There is established in the Department of Public Safety the Council on Domestic Violence and Sexual Assault. The purpose of the council is to provide for planning and coordination of services to victims of domestic violence or sexual assault or to their

Fact Sheet

National Rifle Association of America • Institute for Legislative Action • Research & Information Division
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1/27/97

The Right To Carry

ASK most Americans today, and they'll tell you that they, not government, are the best guarantors of their lives, liberty and happiness. In back-to-back elections in 1994 and 1996, a majority of voters cast ballots for candidates who support restoring the full range of individual citizens' traditional rights, and returning government to the limited role prescribed for it by the Constitution. It has been some time coming, but the day has arrived, much to the dismay of those who believe that big government should only get bigger, wielding more and more control over every American's personal affairs, and commandeering a greater share of every American's rights and responsibilities.

Where the right to keep and bear arms is concerned, nothing so clearly represents the will of the American people as the right-to-carry movement sweeping the nation during the last decade. From just a few states only a short time ago, nearly two-thirds of the states now have laws respecting the right of individual citizens to exercise their fundamental right of self-defense by carrying concealed firearms for protection against criminals. Nothing so clearly represents America's new wave of freedom, and nothing so thoroughly disillusions those whose *control*-oriented philosophy is being left behind.[1]

• 31 states have right-to-carry laws—127 million Americans — nearly half the U.S. population, including 60% of handgun owners — live in right-to-carry states. During the last decade, 22 states have adopted "shall issue" right-to-carry laws. During 1995-1996 alone, 16 states adopted or improved their right-to-carry laws.[2]

• States with right-to-carry laws have lower overall violent crime rates, compared to states without right-to-carry laws — total violent crime is 18% lower, homicide is 21% lower, robbery is 32% lower, and aggravated assault is 11% lower. (FBI)

• In their ground breaking study, Professor John R. Lott, Jr., and David B. Mustard, of the University of Chicago, found that "allowing citizens to carry concealed weapons deters violent crimes and it appears to produce no increase in accidental deaths. If those states which did not have right-to-carry concealed gun provisions had adopted them in 1992, approximately 1,570 murders; 4,177 rapes; and over 60,000 aggravated assaults would have been avoided yearly. . . . [T]he estimated annual gain from allowing concealed handguns is at least $6.214 billion. . . . [W]hen state concealed handgun laws went into effect in a county, murders fell by 8.5 percent, and rapes and aggravated assaults fell by 5 and 7 percent."[3]

• In Florida, the homicide, firearm homicide, and handgun homicide rates have decreased 36%, 37%, and 41%, respectively, since its 1987 carry law. During the same period, the national homicide rate decreased 0.4% while the national firearm and handgun homicide rates increased 15% and 24%, respectively. (FBI) Florida carry license holders are more law-abiding than the general public. Only 0.019% of licenses issued through Nov. 30, 1996 (72 out of 383,452) have been revoked because licensees committed firearm crimes.[4] In an official correspondence to the governor and other state officials, Florida Dept. of Law Enforcement Commissioner James T. Moore stated that "From a law enforcement perspective, the licensing process has not resulted in problems in the community from people arming themselves with concealed weapons."[5]

Florida's homicide and total violent crime trends since right-to-carry adopted

As noted. Florida's homicide, firearm-homicide, and handgun-homicide rates have decreased dramatically since the state's right-to-carry law took effect. "Gun control" supporters claim that Florida's 3-day waiting period is responsible for the state's homicide rate decrease, but historically waiting periods have not caused reductions in homicide. Despite having the nation's longest waiting period (15 days), California's homicide rate has risen, and is now 43% higher than the rate for the rest of the country; California's total violent crime rate is more than 50% higher. States subject to the Brady Act's 5-day waiting period have experienced worse violent crime trends than states exempt from that law. (FBI) Anti-gun researcher David McDowell has observed that "waiting periods have no influence on either gun homicides or gun suicides."[8]

"Gun control" supporters contend that Florida's high total violent crime rate "proves" that right-to-carry doesn't work. The fact is, though, that Florida's violent crime rate trend is better than the trend for the country on the whole — since 1987, Florida's rate is up 4.5%; the U.S. rate is up 12.3%. Also, in Florida and nationwide, only 30% of "violent crimes" involve firearms. More than 93% of violent crimes are aggravated assaults and robberies, and firearms are used in only 22% of aggravated assaults in Florida (23% nationwide), and in 39% of robberies in Florida (41% nationwide). (FBI)

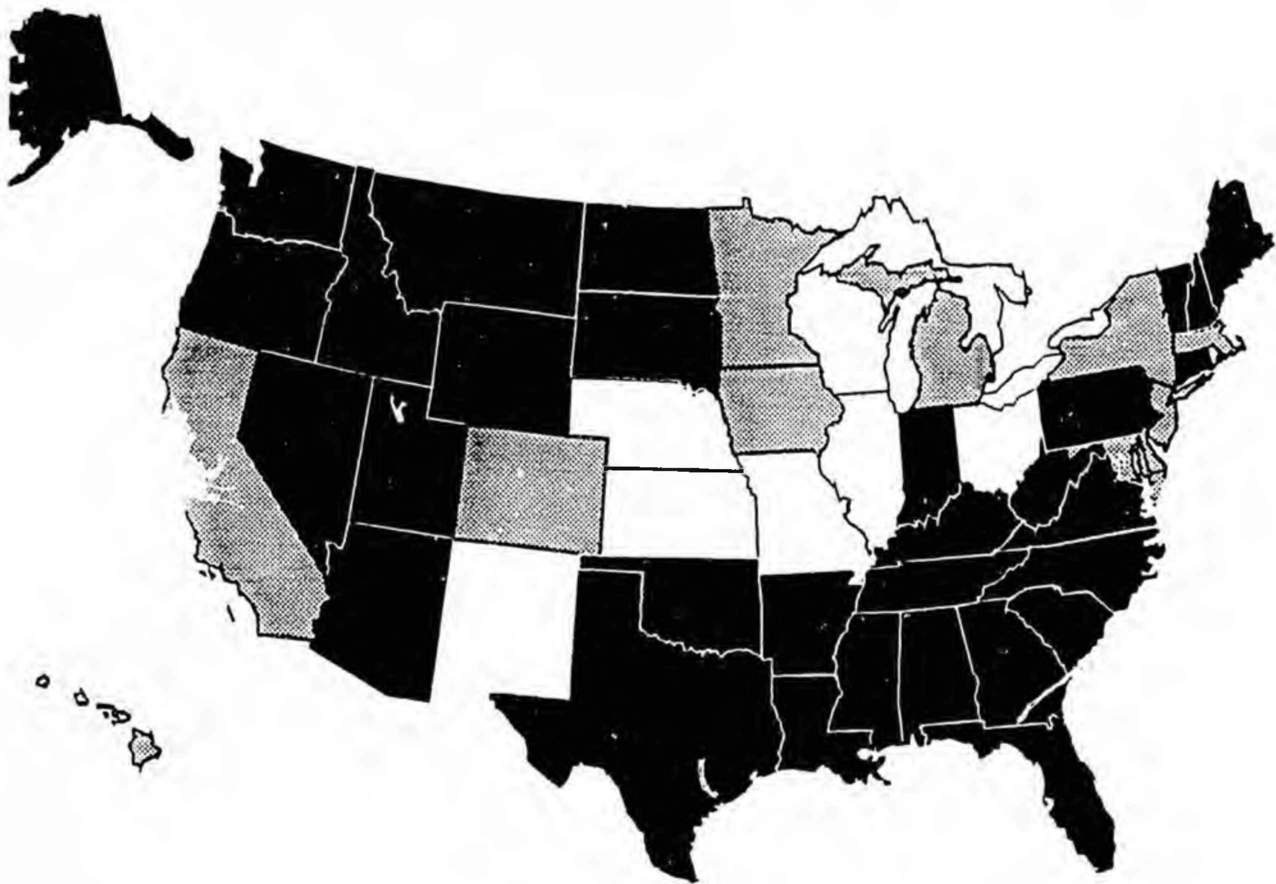
The University of Maryland "study" -- using your money to fund anti-gun "research"

In March 1995, David McDowell and some colleagues released a "study"[9] paid for with *taxpayers' money* by the federal Centers for Disease Control and Prevention (CDC), which regularly uses tax dollars to fund anti-gun "research." (Legislation to stop the CDC's misuse of funds has been proposed in Congress.) The "study" claimed gun homicide rates increased in Miami, Jacksonville and Tampa after Florida's carry law took effect. Florida Dept. of Law Enforcement Commissioner James T. Moore has said that he doubts the researchers' figures.[10] For good reason: total homicide rates declined 10%, 13% and 20%, respectively, in those metropolitan areas, from 1987 until 1993, the latest available data when the study was released. (FBI)

Through 1995, the Florida city trends are as follows: Two-thirds of Florida cities of 10,000 or more population have experienced decreases in their homicide rates since Florida's carry law took effect, 1 out of 3 experiencing a 100% reduction in homicide, having had no homicides in 1995 (improved from 1-in-4 during 1994). Approximately 20% of cities have experienced increases. Eight of Florida's ten largest cities have experienced homicide rate decreases since 1987: Jacksonville - down 46%, Miami - down 13%, Tampa - down 24%, St. Petersburg - up 12%, Orlando - down 41%, Ft. Lauderdale - down 53%, Tallahassee - up 36%, Hollywood - down 30%, Clearwater - down 21% and Miami Beach - down 93%. (FBI)

McDowell, et al., came up with their figures by calculating Jacksonville and Tampa homicide trends from the early 1970s, when homicide rates were lower than today, to create the false impression that Florida's 1987 carry law caused homicide to rise. Then they calculated Miami's trend from 1983 forward, since homicide rates before 1983 were higher, and their inclusion in the comparison would have shown that the city's homicide rate decreased. None of the homicides they studied were committed by license holders, and no distinction was made between homicides that occurred in situations where a license would be required to carry a firearm, and other homicides. McDowell's brand of math comes as no surprise. In a previous study, he claimed Washington, D.C.'s homicide rate decreased after its handgun ban, which took effect in 1977. In reality, D.C.'s homicide rate tripled after the ban. (FBI)

Right-to-Carry Map of the U.S.
January 1997



- Right-to-Carry States
- States w. restrictive permit systems
- States with no permit, and restrictive carrying laws

The police are not obligated to protect citizens

Courts have held that the police are under no obligation to provide protection to individual citizens. In *Warren v. District of Columbia*,[28] the District of Columbia Court of Appeals ruled that "official police personnel and the government employing them are not generally liable to victims of criminal acts for failure to provide adequate police protection . . . this uniformly accepted rule rests upon the fundamental principle that a government and its agents are under no general duty to provide public services, such as police protection, to any particular citizen . . . a publicly maintained police force constitutes a basic governmental service provided to benefit the community at large by promoting public peace, safety and good order." In *Bowers v. DeVito*,[29] the Court of Appeals for the Seventh Circuit ruled that "[T]here is no constitutional right to be protected by the state against being murdered by criminals or madmen."

Handgun Control, Inc's., and other gun-control supporters' views on self-defense

Gun control activists have claimed that women shouldn't resist attackers. Then-Handgun Control, Inc., Chair, the late Pete Shields, advised that, if attacked, people should "put up no defense - give them what they want."[30] According to Dennis Henigan, the director of Handgun Control, Inc.'s Center to Prevent Handgun Violence Legal Action Project, self-defense is "not a federally guaranteed constitutional right."[31] According to anti-gun researchers George D. Newton and Franklin E. Zimring, "women generally are less capable of self-defense and less knowledgeable about firearms."[32]

Gun control supporters cite a small study of King's County (Seattle), Washington, claiming a gun in the home is "43 times more likely" to be used to kill a family member than to kill in self-defense.[33] To reach that ratio, suicides were counted as family member killings, increasing their number more than 500%. Self-defense firearms uses were grossly undercounted by counting only cases in which criminals were killed. In most protective firearms uses, criminals are scared off, captured or non-fatally wounded. The claim that women use handguns to kill few criminals, but are more often killed by criminals with handguns, is misleading for the same reason: criminals are rarely killed in self-defense. Also, the claim is based upon police reports only, excluding fatal shootings ruled self-defense or justifiable by the courts.

Rep. Stearns introduces national right-to-carry reciprocity bill

In January 1997, Rep. Cliff Stearns (R-Fla.) introduced H.R. 339, the Right to Safety and Personal Protection Act, a bill to allow any person with a valid concealed firearm carrying permit or license, issued by a state, to carry a concealed firearm in any other state, as follows: In states that issue concealed firearm permits, each state's laws governing where concealed firearms may be carried would apply within its own borders. In states that do not issue carry permits, a federal "bright-line" standard would permit carrying in places other than police stations; courthouses; public polling places; meetings of state, county, or municipal governing bodies; schools; passenger areas of airports; and certain other locations. H.R. 339 would also apply to the District of Columbia, Puerto Rico and U.S. territories, though D.C. residents, are prohibited from purchasing handguns.

In announcing his bill, Rep. Stearns noted that the Lott/Mustard study showed that right-to-carry laws deter crime. Stearns says that H.R. 339 is needed "to greatly expand the security individuals enjoy in their own states when they travel or simply cross state lines." Under H.R. 339, people who have carry permits issued by their home states would be able to carry lawfully in any other state, under either the laws of the state they are carrying in (if the state issues permits) or under the federal standard (if the state does not issue permits). People who live in states that do not issue permits would be allowed to carry in any state, provided they possess a carry permit issued by any state, under either the state or federal law, as noted.

National Rifle Association 1996 Firearms Fact Card

Second Amendment To The U.S. Constitution

"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."

Like all rights protected by the Bill of Rights, the right to keep and bear arms is possessed by each American individually. Gun prohibitionists' 20th-century "collective right" Second Amendment interpretation is a fraud. The Framers understood that all people are individually "endowed by their Creator" with rights and that states only possess such "powers" as the people allow.

The Supreme Court has ruled in few cases addressing Second Amendment-related issues. The Court recognized that the right to arms is an individual right in *U.S. v. Cruikshank (1876), Presser v. Illinois (1886), Miller v. Texas (1894), U.S. v. Miller (1939) and U.S. v. Verdugo-Urquidez (1990)*. Lower federal court decisions have been divided on the rights question, though those finding against the individual right are contrary to the *Verdugo-Urquidez* decision, in which the Court observed that the term "the people" has the same meaning in the Second Amendment as it does in the First, Fourth, Ninth and Tenth. "The people," the Court said, refers to all persons in our national community. These decisions support the generations-old understanding of the right to bear arms as one of our most important individual liberties.

Second Amendment revisionists claim the National Guard, rather than the general citizenry, is the Militia referred to in the Constitution. For more than 400 years, however, the term "well regulated militia" has meant the people, with privately owned weapons, led by officers chosen by themselves. The Militia of the U.S. is defined under federal law to include all able-bodied males of age and some other males and females (10 U.S.C., §311; 32 U.S.C., §313), with the Guard established as only its "organized" element. The Guard, however, is subject to absolute federal control (Supreme Court, *Perpich v. Dept. of Defense*, 1990) and thus is not the militia envisioned by the Framers.

Right-To-Carry

States with right-to-carry laws have lower overall violent crime rates than other states. The homicide rate is 28% lower and the firearm homicide rate is 33% lower and the handgun homicide rate is 38% lower. Since 1987, when Florida enacted right-to-carry, its homicide rate has dropped 27%, its firearm homicide rate has dropped 34% and its handgun homicide rate has dropped 38% while the U.S. rates rose 8%, 28% and 43%, respectively. (*FBI*) Only .017% of Florida carry licenses have been revoked because of firearm crimes after licensure. (*Florida Dept. of State*)

Survey research by criminologist Gary Kleck indicates at least 2.5 million protective uses of firearms each year in the U.S., more than four times the reported number of violent crimes committed with firearms. Most protective uses do not involve discharge of a firearm. In only 0.1% of protective gun uses are criminals killed, and in only 1% are criminals wounded. A survey for the Dept. of Justice found that 40% of felons had chosen not to commit at least some crimes for fear their victims were armed, and 34% admitted being scared off or shot at by armed victims. (J. Wright, P. Rossi, *Armed and Considered Dangerous*, 1987)

U.S. Dept. of Justice victimization surveys show that the protective use of a firearm lessens the chance that a rape, robbery or assault attempt will be successfully completed and also reduces the

chance of injury to the intended victim.

Clinton Gun Ban

More than 85% of the firearms banned as "assault weapons" by the Clinton crime bill are rifles. However, rifles are the type of firearm least often used in crime. Rifle use in homicide has dropped 36% since 1980. In 1994 rifles ***of any type*** were used in only 3% of homicides, far less than knives (13%), bare hands (5%) and clubs (4%).

Since the first days of the "assault weapon" issue, reports from state and local law enforcement agencies have consistently shown that military-looking semi-automatic rifles and similarly-styled handguns and shotguns have been used in only a small percentage of violent crimes, a fact begrudgingly admitted by the Senate author of the "assault weapons" law, Dianne Feinstein (D-Calif.) and the anti-gun *Washington Post.*

Gun-ban supporters ignore police reports, basing their claim that "assault weapons" are used in crime on BATF firearms tracing data. BATF reports, however, that it "does not always know if a firearm being traced has been used in a crime." The Congressional Research Service reports that the BATF tracing system "was not designed to collect statistics. . . . Firearms selected for tracing do not constitute a random sample. . . . data from the tracing system may not be appropriate for drawing inferences such as which makes or models of firearms are used for illicit purposes. . . . A law enforcement officer may initiate a trace request for any reason. No crime need be involved. No screening policy ensures or requires that only guns known or suspected to have been used in crimes are traced. . . . It is possible that traces may be requested for a variety of reasons not necessarily related to criminal instances."

"Gun control" lobbyists deliberately blur the differences between semi-automatic and fully-automatic firearms, one boasting that "anything that looks like a machinegun is presumed to be a machinegun" by a misinformed public. The fact is, so-called "assault weapons" function precisely like all other semi-automatic firearms, firing only one shot at a time. Because "assault weapons" use commonplace calibers of ammunition, they are well- suited for target shooting, hunting and/or defensive use. Semi-automatic firearms were invented more than 100 years ago, and constitute 15% of privately owned firearms in America.

Contrary to President Clinton's claims, the greatest threat to police officers comes not from "assault weapons," but from criminals and the justice system that fails to punish them -- 73% of law enforcement officers' killers have prior arrests, 56% have prior convictions, and 23% are on probation or parole when they take officers' lives. According to the FBI's "Law Enforcement Officers Killed and Assaulted" reports, of firearms used to murder police officers during the past decade only 2-3% were "assault weapons."

Clinton Ammo Ban

President Clinton claims new kinds of ammunition are being used to defeat bullet resistant vests and kill law enforcement officers, requiring an expansion of the federal "armor piercing ammunition" statute. No new armor piercing ammunition exists, however, and legislation introduced in Congress at the president's urging would outlaw most calibers of rifle ammunition, and many calibers of handgun ammunition, none of which is designed to defeat protective vests. According to the FBI, of officers fatally shot during the last decade, 70% were not wearing vests. Of those who wore vests, 95% were shot in unprotected areas. No law enforcement officer has ever been killed because an armor piercing bullet defeated a protective vest.

Brady Act Failures

"Gun control" supporters claim the federal 5-day waiting period prevents thousands of felons from buying handguns. In fact, most of these supposed "felons" are honest citizens whose applications are temporarily non-approved because background checks initially reveal incomplete or erroneous information. Most of these people are later approved. Brady should not be praised because it delays

honest citizens' handgun purchases.

Instead, Brady should be judged for its failure to impact on crime. Waiting periods do not stop felons from obtaining guns illegally. Since 1968 it has been illegal under federal law for felons to possess firearms (and violent crime has more than doubled). Furthermore, 93% of career armed criminals get their guns from sources other than gun stores (where waiting periods apply), mostly by theft or black market deals. *(J. Wright, P. Rossi, Armed and Considered Dangerous, 1987) BATF, "Protecting America," 1992)*

"Gun control" advocates speciously claim that violent crime has decreased in America because of the Brady Act. In fact, crime has decreased more in Brady-free states, such as those having an instant check system.

Firearm Safety

Many television and newspaper reporters would have the public believe that fatal firearms accidents are an "epidemic," though such accidents are at an all-time low.

Education, rather than restrictions on gun owners, has helped reduce the fatal firearms accident rate to 0.6 per 100,000 citizens, down 82% since the all-time high recorded in 1904. The fatal firearms accident rate pales in comparison to rates for motor vehicle accidents (16.5), home accidents (10.2), other public accidents (7.6), and work-related accidents (1.9). (*Natl. Safety Council*)

Annual fatal firearms accident numbers are down 56% since the all-time high in 1930. This decline occurred as the population doubled, and the number of firearms owned quadrupled, proving that responsible gun ownership poses no inherent threat to safety. (*Natl. Center for Health Statistics, Natl. Safety Council, Census Bureau, BATF*)

To promote more restrictive gun laws, some claim that car registration and driver licensing laws caused fatal motor vehicle accidents to decline 1968- 1991, and assume that similar laws against guns and gun owners would reduce gun accidents. However, those car laws were imposed (most before WWII) for reasons other than safety, and the fatal motor vehicle accident rate did not begin to decrease until 30 years later. Moreover, the fatal firearm accident rate dropped 50% 1968-1991, the greatest decline among major accident types. By comparison, the motor vehicle rate dropped the least, 37%. (*Natl. Safety Council*)

Gun Law Failures

In 1976, Washington, D.C., enacted a virtual ban on handguns. By 1991, D.C.'s homicide rate had tripled, while the U.S. rate rose 12%. New York City, Chicago, Los Angeles and D.C. -- with very restrictive gun laws -- make up only 5% of the U.S. population, yet account for 16% of U.S. murders.

California imposed a 15-day waiting period on handgun sales in 1975, and banned "assault weapons" in 1989 -- yet its homicide rate today is 38% higher than the rest of the country's. In 1975, South Carolina limited handgun sales to individuals to one per month. Since then, South Carolina's violent crime rate has risen more than 100%.

Some have claimed D.C.'s homicide rate declined due to Virginia's 1993 law limiting handgun purchases to one per month. That belief is based on the illogical notion that D.C. murderers would obey a Virginia state law while violating a multitude of much harsher federal and D.C. gun laws.

The Real Causes Of Crime And real Solutions

From 1960-1980, the number of prison inmates per 1,000 violent crimes dropped from 738 to 227, and the crime rate tripled. Each year more than 60,000 felons convicted are not sent to prison. Only 29% of convicts are in prison: 71% are on parole or probation, free on the streets.

Imprisoned criminals serve only one third of their sentences, on average: for murder, 7.7 years; rape, 4.6 years; robbery 3.3 years; and aggravated assault, 1.9 years. Every day in America there are 14 murders, 48 rapes and 578 robberies by convicted criminals on parole or early release from prison. The average career criminal commits more than 180 crimes a year (*Rand Corp.*), contributing significantly to the 14 million violent and property crimes last year. (*FBI*) **The answer to this problem is expanded prison capacity and truth-in-sentencing laws which require prisoners to serve at least 85% of their sentences.**

Juvenile arrests for violent crime increased more than 30% from 1990 to 1993. Arrests for murder alone increased 28.5%. Gang related homicide, just 0.8% of all homicides in 1980, accounted for 3.6% of all such crimes by 1992. The addition of more than 500,000 men in the crime-active age 14-17 male population by the year 2000 will send juvenile crime skyrocketing, according to experts. **Violent juvenile criminals who do "adult crime" should serve "adult time."**

Crime victims or their survivors are often unfairly barred from participating in the criminal justice process in any way, **a problem that can be corrected by victims' rights legislation.**

For more information, contact CrimeStrike at 1-800-TOUGH-11.

Firearms Facts

Guns in the U.S.:	230 million, including 75-80 million handguns (BATF)
Gun owners in U.S.:	60-65 million, of whom, 30-35 million own handguns
Owners who have used guns for self-defense:	11% of firearms owners 13% of handgun owners
Annual criminal gun use:	Less than 0.2% of firearms, Less than 0.4% of handguns

About 99.8% of firearms and more than 99.4% of handguns will not be used to commit violent crimes in any given year.

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GUN-FREE SCHOOL ZONES ACT OF 1996

- The Gun-Free School Zones Act was initially signed into law as part of the Crime Control Act of 1990 (Pub. L. 101-647), taking effect on January 29, 1991. On April 26, 1995, the Supreme Court handed down a 5-4 decision striking down the law as unconstitutional. The Court's opinion stated that Congress had overstepped its constitutional powers to regulate interstate commerce when it passed a law banning gun possession within 1,000 feet of a school (*United States v. Lopez*). The decision turned on whether Congress had the authority to pass the law based on the Commerce Clause of the Constitution which specifically grants Congress the power to regulate interstate commerce.

- In September of 1996, Senator Herb Kohl (D-WI) offered a slightly modified version of the original Gun-Free School Zones Act in the form of an amendment to the Treasury, Postal Appropriations bill. The Kohl Amendment passed and was included in the Omnibus Appropriations bill for fiscal year 1997 (FY97). In an attempt to satisfy the Court's concerns, the Kohl Amendment specified that the law would apply only to those firearms that have "moved in or that otherwise affects interstate or foreign commerce". Virtually all firearms have crossed state lines and would thereby be covered by the new language, however it is still unclear whether or not this new element would allow the law to pass constitutional muster should the Court consider the issue again.

- In 1990, NRA-ILA urged the Congress to include exceptions in the Gun-Free School Zones Act to ensure that certain generally recognized lawful activities would not cause otherwise law-abiding gun owners to be unwittingly covered by the Act, thereby leaving them open to a possible federal felony charge. These exceptions remain in the Kohl Amendment as enacted as part of the Omnibus Appropriations bill for FY97, and are as follows:

  - "School" means a school which provides elementary or secondary education, and "school zone" means the grounds of a public, parochial, or private school, or within a distance of 1,000 feet from such grounds.

  - The prohibition would not apply to:

    - ** Firearms on private property (this would include a situation where a private home is used for purposes of "home schooling");
    - ** Firearms which are unloaded <u>and</u> are in a locked container or locked firearms rack on a motor vehicle;
    - ** Unloaded firearms possessed by an individual traversing school grounds for the purpose of gaining access to lands open for hunting if the entry is authorized by the school;
    - ** Persons licensed by state or local authorities, individuals using a firearm in a school program, or law enforcement officers acting in their official capacity.

* The prohibition would also apply to the discharge of a firearm within the school zone, but would not apply to:

  ** The discharge of a firearm on private property;
  ** Discharging a firearm as part of a school program;
  ** Discharge of a firearm by an individual in accordance with a contract between the school and the individual;
  ** Discharge of a firearm by a law enforcement official acting in his or her official capacity.

* The law specifies that the Federal government, upon enactment of the Gun-Free School Zones Act, does not intend to occupy this field of law. Therefore, individual states and localities may enact there own Gun-Free School Zones Acts which are equally or more severe than the federal law. As of June of 1995, only six states did not already have there own Gun Free School Zones Act: Hawaii, Kentucky, Massachusetts, Nebraska, New Hampshire and Wyoming.

Study: Weapons laws deter crime

Fewer rapes, killings found where concealed guns legal

By Dennis Cauchon
USA TODAY

In a comprehensive study that may reshape the gun control debate, researchers have found that letting people carry concealed guns appears to sharply reduce killings, rapes and other violent crimes.

The nationwide study found that violent crime fell after states made it legal to carry concealed handguns:

- ▶ Homicide, down 8.5%.
- ▶ Rape, down 5%.
- ▶ Aggravated assault, down 7%.

The University of Chicago study, obtained by USA TODAY, is set to be released next Thursday. But its impending release has already sent shock waves through the gun-control debate because of the effect it may have on one of the most controversial areas of gun law.

Since 1986, the number of states making it legal to carry concealed weapons has grown from nine to 31.

The National Rifle Association has led this fight in state legislatures, arguing that concealed weapons deter crime.

Gun control supporters counter that these laws cost lives by increasing accidental deaths and impulsive killings.

The study analyzed FBI crime statistics in the nation's 3,054 counties from 1977 to 1992 to see if the introduction of concealed-weapons laws had any effect on crime.

The results overwhelmingly supported the idea that these laws deter violent crime.

The drop isn't primarily caused by people defending themselves with guns, says John Lott, the study's author. Rather, criminals seem to alter their behavior to avoid coming into contact with a person who might have a gun.

Concealed-weapons laws have drawbacks, too, the study found. Auto theft and larceny increased. Criminals shifted to property offenses, in which contact with a victim is rare, says Lott.

"The policy implications are undeniable: If you're interested in reducing murder and rape, then letting law-abiding, mentally competent citizens carry concealed weapons has a positive impact," says Lott.

Gun control backer Josh Sugarman of the Violence Policy Center blasted the study: "Anyone who argues that these laws reduce crime either doesn't understand the nature of crime or has a preset agenda."

Lott, who spent two years on the study, says he sent his research to scholars who might disagree with him and made changes to satisfy the critics.

David Kopel, a gun control scholar who did a smaller study on the same issue, says, "Lott's study is so far ahead of all previous studies that it makes them all worthless."

ADN 7/22/96

FORUM / LETTERS

Concealed-gun laws appear to cut crime rates

By DAVID KOPEL

A quiet revolution in gun policy is spreading throughout America. Ten years ago, only a half-dozen states routinely issued permits for trained citizens to carry concealed handguns for personal protection. Today, however, 31 states comprising more than half the nation's population grant concealed-carry permits to law-abiding citizens. In the long run, this movement will prove far more significant than either the Brady Bill waiting period or the ban on certain semiautomatics.

In 1987, Florida Gov. Bob Martinez signed a bill entitling any citizen who clears a fingerprint-based background check and passes gun-safety classes to receive a permit to carry a concealed handgun for protection. Since then, a steady progression of states has adopted concealed-carry laws modeled on Florida's. Has this movement made America safer or more dangerous?

In research conducted for an article in the Tennessee Law Review, historian Clayton Cramer and I found that in Florida, following adoption of its concealed-carry law, the murder rate started an immediate, steady decline. Before the law, Floridians were about 36 percent more likely to be murdered than other Americans; after a few years, the Florida rate was equal to or slightly less than the national rate. As for other violent crimes, Florida was the worst state in the nation both before and after the new law. Florida's overall violent-crime rate, however, rose much more slowly after 1987 than did the national violent-crime rate.

When we examined violent-crime data in California, where permit policies vary widely by county, we found that counties that issue concealed-carry permits liberally had lower violent-crime rates than counties with restrictive policies; restrictive counties had lower rates than counties with prohibitive policies.

A comprehensive study by University of Chicago law professor John Lott and graduate student David Mustard examining crime data for 3,054 counties found that while concealed-carry reform had little effect in rural counties, in urban counties it was followed by a substantial reduction in homicide and other violent crimes such as robbery. At the same time, there was a statistically significant rise in non-confrontational property crimes, such as larceny and car theft. Apparently many criminals concluded that the risks of encountering a victim who could fight back had become too high.

Lott and Mustard estimate that if all states that did not have concealed-carry laws in 1992 adopted such laws, there would be approximately 1,800 fewer murders and 3,000 fewer rapes annually. Thus the adoption or improvement of concealed-carry laws in more than a dozen states since 1992 may be one reason for the current decline in murder rates.

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In some respects, the concealed-carry movement has become a women's issue. In fact, about a quarter of those who apply for and receive concealed-carry permits are women. When Alaska Gov. Walter Hickel signed concealed-carry legislation in 1993, he explained that the constituents he found most compelling were "the women who called and said they worked late and had to cross dark parking lots, and asked why couldn't they carry a concealed gun?" Leading advocates for concealed-carry laws include female victims of crime such as Suzanna Gratia Hupp, whose parents were murdered five years ago in a mass killing in Killeen, Texas; Rebecca John Wyatt, the founder of Safety for Women and Responsible Motherhood; and Marion Hammer, the new president of the National Rifle Association and an activist in the Florida concealed-carry debate. Hammer once brandished her handgun to ward off a gang of would-be robbers.

Typically, when state legislatures first consider concealed-carry bills, opponents warn of horrible consequences: Permit holders will slaughter each other in traffic disputes, while would-be Rambos shoot bystanders in incompetent attempts to thwart crime. But within a year of passage, the issue usually drops off the media radar screen, while pro-gun-control lawmakers conclude that the law wasn't so bad after all.

Why? Because everyone is a potential beneficiary of concealed-carry reform. Since criminals don't know which of their potential victims may be armed, even persons without concealed-carry permits would enjoy increased safety from any deterrent effect. Moreover, a Psychology Today study of "good Samaritans" who came to the aid of violent-crime victims found that 81 percent were gun owners, and many of them carried guns in their cars or on their persons.

Concealed-carry permits are no panacea for high crime rates. But they will be an important component of an anti-crime strategy based on the right and duty of good citizens to take responsibility for public safety.

☐ David Kopel is research director of the Independence Institute, Golden, Colo. This piece is adapted from his article in the July/August issue of the Heritage Foundation's magazine, Policy Review: The Journal of American Citizenship. Readers may write to him in care of The Heritage Foundation, 214 Massachusetts Ave. NE, Washington, D.C. 20002.

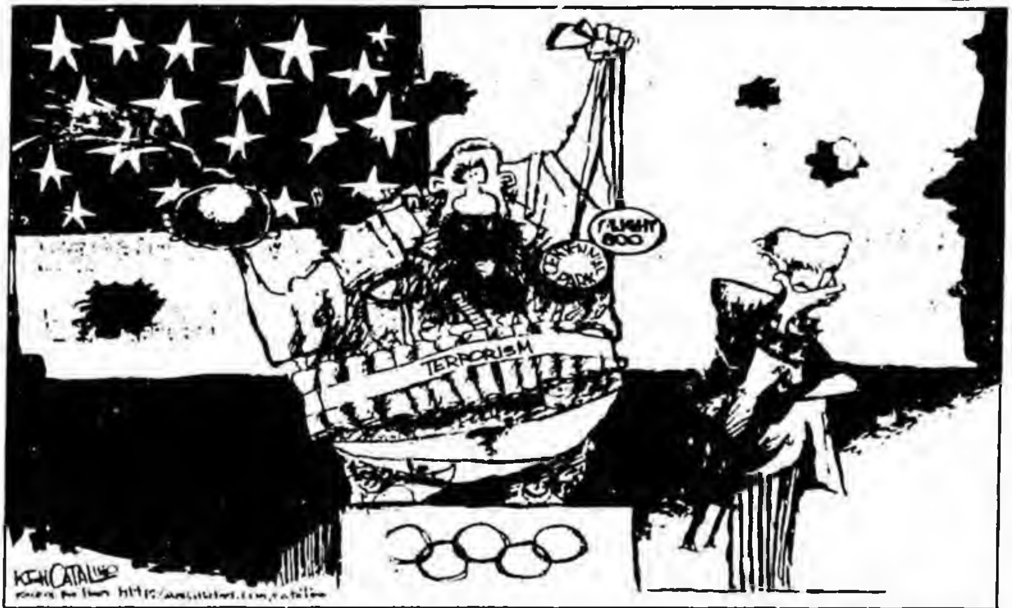
Concealed-carry revision gets bum rap

By PAUL JENKINS

State government is a constant wonder. Here, we have a governor who says he wants peace with lawmakers so that Alaska's myriad problems can be addressed. But at the same time, we have thin-skinned petty functionaries in this administration going out of their way to say some very ugly things about those same lawmakers.

Take this deal with Gov. Tony Knowles' communications director, David Ramseur, and Sen. Lyda Green, for instance.

The Wasilla Republican offered a bill to modify Alaska's 18-month-old concealed-carry law. Knowles vetoed it. Green wrote an opinion piece published in the Frontiersman that said he was a lunkhead for doing so. That should have been it. Business as usual. But then, Ramseur waded in with a letter to the editor in the July 24 edition of the Frontiersman.



It was a beaut. Ramseur accused the elected official of wrapping herself in the Constitution and continuing to "defy common sense."

Jenkins

He distorted what Green's bill was about. He opined that she was just whining about the veto of "extremist legislation pushed by the self-styled 'terminator caucus,' which many Alaskans have now dubbed 'the gang that couldn't shoot straight.'"

If he had let it go at that — just a basic cheap shot — it would have been bad enough, but he did not. Referring to the original legislation that put the concealed-carry law on the books, he said, "That bill passed with the support of law enforcement . . . ."

That, ladies and gents, is a crock, a revisionist's view of recent history. It shows why those who support the Second Amendment must be wary of government. Those who fear guns, and the people who have them, have a tendency to make things up or leave things out.

What happened to Green's bill is a great recent example. Among other things, Ramseur and others have howled about a provision that would have allowed a person carrying a concealed gun to go into a bar or restaurant that serves alcohol. Unfortunately, neither Ramseur nor the news media mention that the bill specifically would have barred that person from drinking in the establishment — or that Alaska already has a law prohibiting possession of a weapon by an intoxicated person.

The truth about Alaska's concealed-carry law is this: Two years ago law enforcement administrators — not the cops on the street — fought the original legislation tooth and nail. You saw some of them recently in news accounts. They were standing with the governor at the soppy, image-driven ceremony at the Law Enforcement Memorial to veto Green's legislation.

And the lapdog media helped them in their initial efforts to block concealed carry — and their efforts to kill Green's bill.

A few years ago, there were scare stories suggesting crazed gun freaks would shoot each other over minor fender-benders at intersections. Then it was bad for kids. Then, dangerous for women. People would shoot themselves. It would put police officers in danger.

Many top cops — and Anchorage's sadly led the way — lobbied their fannies off. Regular folks should not be walking the streets with guns, they seemed to say, because they are too stupid and vicious to be trusted.

They slapped together a so-called White Paper packed with half-truths and deceptions in an effort to sway legislators. They twisted arms in the House. They twisted arms in the Senate. They twisted former Gov. Wally Hickel's arm in an effort to keep him from signing the bill. The incoming administration — the same administration that could barely wait to begin chopping up guns in state storage — even asked that Hickel not sign the bill until it could review its provisions. Hickel, God bless him, signed it anyway.

And did people line up to shoot each other? Nope. In Alaska, just like in every other state with concealed-carry statutes, law-abiding citizens have obeyed the law. There have been no wild gunfights, no bar shootouts. The top cops — who spent time and money working against the public — were dead wrong.

Apparently, Ramseur now would have us believe that the cops who worked to kill Green's bill have always adored the idea of concealed carry, but worked against her bill to save us. What nonsense. Many of them did not want Alaska to have concealed-carry laws in the first place. As one told me after the law went into effect: "I guess we'll have to live with it." Nothing has changed. They certainly don't want the law expanded. And if we ever go to sleep, you can bet they'll work to have the existing law repealed.

And now, Ramseur's version of history and what Green's bill was all about are being sent out to people who write the governor's office asking about the veto. That's too bad. That's the kind of thing that widens the war with the Legislature, makes intelligent people nervous about government and serves neither the governor nor the people of Alaska.

State government, indeed, is a constant wonder.

Paul Jenkins is an editor of The Anchorage Times.

Alaska State Legislature

Session:
State Capitol
Juneau AK 99801-1182

Senate State Affairs

Interim:
716 W 4th Avenue
Anchorage AK 99501-2133

Crunch these gun numbers

While Bill Clinton runs the railroad, the engine that pulls the guns-as-public-health-menance train is the Federal Centers for Disease Control and Prevention. Their goal is to "revolutionize" society's view of guns until they are considered "dirty," deadly — and banned.

People in our community and the article "NRA aims to kill gun research," (July 11), would have you believe that by the year 2001, gun injuries are expected to surpass motor vehicle injuries as the nation's leading cause of fatal injuries.

So let's look at this information from "Statistical Abstract of the United State 1995," by the Bureau of the Census.

In 1980, firearms accounted for 33,780 deaths; in 1985, 31,566 deaths; in 1990, 37,155 deaths; in 1991, 38,317 deaths; and in 1992, 37,776 deaths.

In 1970, motor vehicle accidents caused 108,126 deaths; in 1980, 106,102 deaths; in 1990, 92,641 deaths; in 1991, 86,157 deaths; and in 1992, 80,967 deaths.

Major cardiovascular disease accounted for one million deaths in 1970. That number dropped to 988,000 in 1980; 916,000 in 1990; 915,000 in 1992, and rose again in 1993 to 944,000 deaths.

The number of deaths from influenza and pneumonia was 62,000 in 1970; 54,000 in 1980; 79,000 in 1990; 76,000 in 1992 and 81,000 in 1993.

Gee, by the year 2001, I'll have a better chance of dying from a heart attack, pneumonia or a motor vehicle accident than from a firearm.

— *Mickey Sexton*
Anchorage

ADN 7/18/96

Personal rights gun bill takes hit from Knowles

SPECTRUM

Sen. Lyda Green

Revisions to Alaska's Concealed Handgun Permit Program contained in Senate Bill 177 would not have granted new or increased rights. Rather, the revisions would have protected our civil right to keep and bear arms — a right and freedom guaranteed in our state and federal constitutions.

In passing legislation to enact Alaska's Concealed Handgun Program (CHP) in 1994, and SB 177 revising the program this year, the Legislature upheld and worked to restore Alaskan's civil rights. By vetoing this legislation, the governor once again chose to exert governmental control over individual choice.

I sponsored SB 177 after many Alaskan permit holders, non-permit holders, firearms instructors and gun rights advocacy groups told me that the concealed handgun program is too expensive and too restrictive. CHP permit holders have taken the personal responsibility for self-protection and protection of their loved ones. To inhibit their ability to do so through over burdensome regulation is not right.

To receive a CHP permit, an applicant must meet rigorous program criteria. Applicants are required to provide fingerprints, submit to background checks, receive professional training on the use of firearms, the laws relating to firearms and the use of deadly force, and qualify with their handgun. CHP permit holders are among our most responsible and law abiding citizens.

Provisions of SB 177 would reduce the permit fee, provide for reciprocity with other states and remove some restrictions on where a permit holder is allowed to carry.

These provisions were thoroughly discussed throughout the committee process, examined by the Legislature, and passed by both houses with bipartisan support.

In numerous committee meetings, the administration's spokesperson stated, "In a chocolate-covered world, we would leave the program as is."

Consistent with his policy of destroying confiscated weapons and his veto of SB 274 (protecting the operation of sport shooting ranges), the governor's veto rhetoric for Senate Bill 177 relies on fear and distortion to lend validity to his liberal ideology — promoting a paternalistic government and repressing individual freedoms.

While the governor cited the provisions expanding where a permit holder can carry as dangerous, he overlooked the legitimate concerns of the license holder. He said carrying concealed in banks would create a dangerous situation. Protection while carrying deposits to the bank is one of the primary reasons that business owners get a permit.

No one else is providing protection for them on the way to and from the bank. Is it right to force them to leave their handgun unattended in their car? Is it safer there than in the possession and direct supervision of a trained, licensed, law-abiding citizen?

This bill does not advocate the mixing of guns and alcohol. It is illegal to use or possess any weapon, concealed or not, while impaired by alcohol, and rightfully so.

SB 177 would have allowed permitees to carry concealed weapons into places that have beverage dispensary licenses providing the permitee consume no alcohol. At no time in the process did anyone argue for the right to use a firearm, in any circumstance, while drinking.

In his veto message the governor chose to ignore certain provisions of this bill: one would have allowed a private property owner the right to deny firearms by posting a sign and another that would provide the tool for excluding carry on public property by statute.

These important provisions protect private property rights and ensure adequate review of public property policy decisions that could infringe on second amendment rights.

As a legislator, I take the responsibility of defending the constitutional rights of my constituents very seriously and I am deeply concerned with the continuing anti-firearms policy of this administration.

With over 5,000 permits issued and not one case of weapon misconduct, Alaska's Concealed Handgun Permit program has proven to be a good program.

I, and the majority of my colleagues, believe that the revisions contained in Senate Bill 177 make it better. I join the many Alaska gun owners in disappointment over the governor's veto. It's not a "chocolate-covered world" out there and no qualified citizen should be denied the opportunity for personal protection.

Sen. Lyda Green, a Republican, lives in Wasilla.

The Frontiersman - Friday, July 12, 1996.

ADN 7/1/96

Armed society is polite society

Well, I see that "Slick Willie's" agenda on personal liberties and Second Amendment rights took another hit in Juneau when Gov. Tony Knowles vetoed the concealed carry amendments bill recently.

A few facts.

A person with a carry permit cannot carry a weapon concealed in any area that a non-permitee can carry one openly.

If I am with my wife in an unsafe area frequented by gangs or other lowlife and decide to go into a pizza place or a food establishment that serves beer/wine, even if we don't drink, I am in violation of the law.

If I go to the bank to cash a check or draw out money for a "cash only" purchase and have my weapon, I am in violation.

I know several law enforcement people who are very much in favor of all aspects of personal protection weapons — very unlike the staged TV presentation with our governor and some of our officials.

The amendment proposal only makes the concealed carry law more workable and realistic and gives us "good guys" an even playing field with the bad guys.

Remember, an armed society is a polite society.

If all you worried people carrying a weapon illegally to protect yourself would take the time to get a legal carry permit, join the NRA and vote, we would not be in danger of having our Constitutional rights trampled by "Big Brother."

Remember Waco and Ruby Ridge — it can happen to you too.

— John C. Woolery
Girdwood

TONY KNOWLES
GOVERNOR

P.O. Box 110001
Juneau, Alaska 99811-0001
(907) 465-3500
Fax (907) 465-3532

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

June 19, 1996

The Honorable Drue Pearce
President of the Senate
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

96-06-20A09:20 RCVD

Dear President Pearce:

Under the authority of Art. II, sec. 15 of the Alaska Constitution, I have vetoed the following bill:

House CS for CSSB 177(FIN) am H

"An Act relating to permits to carry concealed handguns; and relating to possession of firearms on state ferries."

I believe this bill would seriously undermine the safeguards in Alaska's concealed weapons law and would jeopardize the public and law enforcement officials. The bill would remove many of the places where concealed weapons are prohibited under current law and would permit the carrying of concealed weapons by out-of-state persons who may not meet Alaska's statutory requirements.

The current concealed handgun program has been in place for only 18 months. The experience to date has not demonstrated that the law is "broken," or that the types of amendments contained in this bill are warranted or necessary.

A specific objection to this bill comes from a basic premise, founded on hundreds of years of experience, that guns and alcohol don't mix. This bill would allow concealed handguns in bars. This scenario invites tragedy.

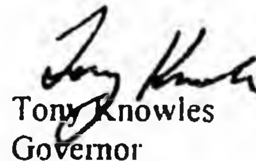
Post-it® Fax Note 7671	Date 6/20	# of pages ▶ 2
To Senator Green	From Senate Secretary	
Co./Dept.	Co.	
Phone # 376-3157	Phone #	
Fax #	Fax #	

I also question the wisdom of allowing concealed guns in banks and government offices as proposed in this bill. There is good reason for these locations to be protected. We should not jeopardize their security by allowing concealed handguns on the premises.

Finally, the manner in which this bill would offer reciprocity for concealed handgun permit holders from other states is especially troubling. Reciprocity would be offered to any out-of-state permittee regardless of the requirements to obtain a permit in another state, even if those requirements are less stringent than in Alaska. Moreover, an out-of-state permit holder would not be subject to the same restrictions that apply to Alaska permit holders. While this may not have been the intent of the legislature, it is unacceptable to allow activities by out-of-state residents which are prohibited by Alaska residents under our laws.

Many municipalities and law enforcement organizations have voiced strong opposition to this legislation including the Alaska Peace Officers Association, the Alaska Association of Chiefs of Police, the Public Safety Employees Association, the Municipality of Anchorage, and the Cities of Palmer and Wasilla. I acknowledge their experience and professionalism in this area and find a veto of this legislation necessary in the interest of public safety.

Sincerely,



Tony Knowles
Governor

Tony Knowles
GOVERNOR

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State of Alaska
OFFICE OF THE GOVERNOR
Juneau

RECEIVED
JUL 29 1996
Ans'd..........

July 22, 1996

Robert H. Parkerson, Ph.D.
HC 02, Box 7630-A1
Palmer, AK 99645

Dear Dr. Parkerson:

Thank you for your letter expressing interest in Senate Bill 177, which would have expanded Alaska's concealed handgun law by permitting concealed weapons in bars, government offices, and banks, and allow out-of-state permit holders to carry concealed guns in Alaska.

On June 19, I vetoed this bill. I believe it would have seriously undermined the safeguards in Alaska's current concealed weapons law and would have jeopardized both the public and law enforcement officials. The current concealed handgun program has been in place for only 18 months. The experience to date has not demonstrated the law is "broken," or the types of amendments contained in this bill are warranted or necessary. The existing program was the result of a carefully crafted compromise struck two years ago and passed with the support of law enforcement, so I believe we should give it more time to work.

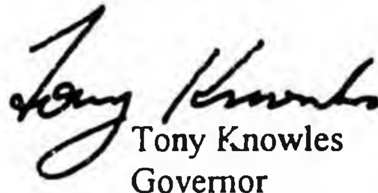
Also, the idea of allowing guns in bars defies common sense. Hundreds of years of experience has shown guns and alcohol don't mix. Allowing guns in bars simply invites tragedy, a major concern of Alaska's police officers who lined up strongly against this bill.

Finally, the bill offered reciprocity for concealed handgun permit holders from other states--meaning people who have permits from other states, regardless of the restrictions on those permits. would be allowed to carry concealed guns in Alaska. That would remove the control of concealed weapons permits from our hands, which is unacceptable.

I realize this issue is one that strikes to the heart of many people who believe their basic right to bear arms is being violated under current restrictions on concealed guns. But it is my responsibility, and the responsibility of our law enforcement officers, to protect the safety of all Alaskans. I don't believe this bill served that purpose and, in fact, had the potential of doing just the opposite.

Again, thanks for taking time to consider this legislation and contact me with your views.

Sincerely,



Tony Knowles
Governor

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

RECEIVED JUL 29 1996

COPY

MEMORANDUM July 29, 1996

SUBJECT: Possession of concealed weapons illegal in buildings housing state offices: extension to other venues (Work Order No. 20-LS0026\A)

TO: Senator Lyda Green
ATTN: Brett Huber

FROM: Jack Chenoweth
Legislative Counsel

Your inquiry about the soundness of the guidance provided in the July 19 memo of Deputy Director Stan Ridgeway to employees of the Division of Vocational Rehabilitation has been directed to me for preparation of a response.

On the basis of my understanding of the applicable statutes, I would have hesitated to provide the guidance reported by Mr. Ridgeway.

AS 18.65.755(a)(4) and (5) provide the statutory authority supporting the conclusion that possession of a concealed handgun within a building housing state offices (or in an office of a state agency) is illegal. However, extension of the proscription to cover "parking lots and visits to clients either at . . . home or in a mutual meeting place" stretches that statute beyond legislative reasoning and the interpretation of the statute by the Department of Public Safety, the agency that is directed to implement the concealed handgun permit program.

To the suggestion that the proscription applies to "parking lots" serving buildings that house state offices, I would contend, first, that nowhere in the concealed handgun permit provisions, AS 18.65.700 - 18.65.790, is it stated or reasonably implied that proscriptions to possession of concealed handguns necessarily extend outside the confines of the specific premises identified. Where the legislature wanted to make clear that possession of concealed weapons was prohibited on grounds adjacent to a particular structure, it specifically said so, as, for example, with respect to its handling of "school grounds." Second, in implementing AS 18.65.700 - 18.65.790, the Department of Public Safety's regulations, 13 AAC 30, considered the terms and phrases of the statute and the contingencies in which they would apply and determined that, in some circumstances, the statute should be interpreted to include adjacent grounds, as, for example, in 13 AAC 30.900(b)(9), added to clarify ambiguity in the reference to "passenger loading or unloading area of an airline terminal," wherein the term was defined to include "any . . . airport area that is immediately adjacent

to [an airline terminal] building that is used for ground transportation or pedestrian traffic . . . ." In summary, the statutory authorization for concealed handgun permits and the regulations interpreting those statutes do not give the proscriptive language an expansive reading so as to cover "parking lots" and similar grounds in conjunction with state office facilities. The interpretation reportedly provided by the attorney general's office seems to me to be at variance with the direction of the legislation and the interpretation that is supplied by the agency regulations implementing the program.

To the suggestion that the proscription should apply also "to clients . . . at their home . . . . ," I would respond by noting that the concealed handgun permit provisions explicitly give the authority as to whether a concealed weapon may be brought into private premises occupied as a residence to the resident, AS 18.65.755(a)(9). The interpretation reported by Mr. Ridgeway is at variance in that it presumes to tell the division representative that he or she may not carry a concealed weapon into a private residence even when the resident or person having the possession of the premises has not interposed objection to having concealed handguns on premises in the manner permitted by law.

To the suggestion that the proscription should apply also "to clients . . . [meeting with division personnel] in a mutual meeting place," I suggest that, to the extent that the mutual meeting place is not a building or premises described in AS 18.65.755(a)(4) and (5), the concealed handgun permit provisions explicitly give the final authority as to whether a concealed weapon may be brought into a business meeting to the participants who are involved at the specific meeting. AS 18.65.755(a)(10); see, especially, 13 AAC 30.900(b)(8), extending the coverage of the phrase "meeting of a business, charitable, or other organization or entity" to discussions that include at least one representative of a government entity. Again, the reported interpretation presumes to tell the division representative that he or she may not carry a concealed weapon into a meeting. That is a decision that, under the statute and the regulation as framed by the Department of Public Safety, is left to each government employee who participates in the meeting to decide as to whether or not to interpose objection to having concealed handguns at the meeting.

I trust this is responsive to your inquiry.

JBC:lmb
96-121.lmb

RECEIVED
AUG 01 1996
Ans'd.........

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
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130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM August 1, 1996

SUBJECT: Possession of concealed handguns: Assistant Attorney General Tom Dahl's July 26 memo (Work Order 20-LS0026\A)

TO: Senator Lyda Green
ATTN: Brett Huber

FROM: Jack Chenoweth
Legislative Counsel

The subject at hand concerns the authority of the state, as an employer, to set limitations or regulations on the activities of its employees incidental to the employment relationship.

You have asked me to respond to the central point of Assistant Attorney General Tom Dahl's July 26 memo. That point, made in the last part of the third paragraph of his memo, asserts that

> . . . the state or any management entity has the authority to set conditions of employment that may prohibit employees from doing things that are otherwise legal . . . . Such activities could subject the state to liability or otherwise detract from the mission of the agency or the image that the agency wishes to project when dealing with the public or with clients.

From that, Mr. Dahl concludes that a state agency, acting by departmental policy, could prohibit employees from carrying concealed firearms while on state business outside of state buildings.

The state may establish reasonable rules and regulations for its employees.

An employer may make reasonable rules and regulations for the conduct of the employer's business, and an employee has a legal duty to comply with those rules, orders and policies. Central Alaska Broadcasting v. Bracale, 637 P.2d 711, 713 (Alaska 1981). That general authority applies to state employees covered by collective bargaining agreements. Nothing in the collective bargaining agreements now in place sets aside the state's prerogative to exercise authority in this area. See, for example, article IV, "Management Rights," General Government Unit Employment Bargaining Agreement, affirming management's right to manage its affairs. As an employer, the state retains the right to define conduct on the part of its employees that has a reasonable relationship to the employer's interests.