

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

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argument, the court denied the motion to suppress.

[4, 5] A defendant who seeks to challenge the legality of a search or seizure conducted under a properly issued and executed warrant, has the burden of proving the illegality. *State v. Rand*, 430 A.2d 808, 817 (Me.1981). In essence, the defendant contends that the August 12, 1983 search was illegal and therefore that the August 25 search resting on Deputy Herrick's observations on August 12 is also illegal. Since the defendant concedes that the Superior Court, acting in the unrelated case, upheld the legality of the August 12 search and since the defendant presented no evidence at the suppression hearing, the defendant failed to meet his burden of proof as to this contention.

[6] Nor is there merit in the defendant's contention that Deputy Herrick's affidavit does not support probable cause because it was based solely on "stale" information. In *State v. Willey*, 363 A.2d 739 (Me.1976), we stated that whether past circumstances disclose a probable cause that is still continuing at the time of the request for a search warrant is not determined merely by the passage of time, but may also depend upon the circumstances of each case. Accordingly, we refrained from prescribing a *per se* rule fixing a mandatory maximum time within which a search warrant must be sought after the occurrence of events relied on to show probable cause. *Id.* at 742. In the instant case, considering the circumstances, including the kind of criminal activity involved, the nature of the property to be seized, and its location, it was not error to conclude that thirteen days after first seen in the defendant's home there was probable cause to believe that the firearm was still there. Accordingly, the court properly denied the defendant's motion to suppress.

#### IV.

The defendant's next contention raised for the first time on this appeal is that the Superior Court erred in denying his motion

to suppress his statement of August 25, 1983, and the evidence obtained by use of that statement because the conduct of the police constituted the functional equivalent of custodial questioning without giving him the warnings provided in *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

Under *Miranda*, the State may not use statements of a defendant "stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination." *Id.* at 444, 86 S.Ct. at 1612.

[T]he term "interrogation" under *Miranda* refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect.

*Rhode Island v. Innis*, 446 U.S. 291, 301, 100 S.Ct. 1682, 1689, 64 L.Ed.2d 297 (1980). See *State v. Estes*, 418 A.2d 1108, 1111 (Me.1980). When a defendant has given a statement in the absence of *Miranda* warnings, the State bears the burden of proving by a preponderance of the evidence that the warnings were not required. *State v. Longley*, 483 A.2d 725, 730 (Me.1984). The ruling of the trial court on the defendant's motion to suppress will be upheld if the record provides rational support for the court's determination.

Contradictory testimony concerning questioning of the defendant was presented at the hearing on the defendant's motion. Deputies Herrick and Ackerly testified that they were the only officers present when Deputy Herrick arrested the defendant on the present charges. At the time of the arrest, Herrick handed the defendant a copy of the arrest warrant and the warrant for the search of the defendant's apartment. After reading the search warrant, the defendant stated that the shotgun belonged to Patrick Lane. The

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*State v. Cobb*, 428  
*State v. Williams*, 358  
*Carfield v. State*, 649  
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*Cartwright*, 246 Or.  
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defendant testified, however, that after placing the defendant under arrest and handing the defendant copies of the warrants, Herrick had questioned the defendant concerning the location of the shotgun, and the defendant had stated it was no longer at the defendant's home because Patrick Lane had picked it up sometime before.

[7] On the evidence before it, the trial court was warranted in concluding that after the arrest of the defendant Deputy Herrick did not actually interrogate the defendant or by his conduct engage in the functional equivalent of interrogation of the defendant.

The defendant next contends that the court erred in admitting into evidence, over the objections of the defendant, a certified copy of the 1968 judgment and conviction of the defendant for larceny from the person. Prior to the submission into evidence the trial court twice suggested that the defendant stipulate to his conviction of a crime punishable by imprisonment of one year or more without indicating the nature of the offense. The defendant declined to stipulate and failed to suggest any other method by which the fact of his conviction could be admitted without indicating the nature of the offense. On appeal the defendant contends that the admission into evidence of the document and in particular of the exact nature of the conviction deprived him of due process. We find no merit in this contention.

[8,9] The State was required to prove as an essential element of each count that the defendant had been convicted previously of a crime punishable by one year or more of imprisonment. 15 M.R.S.A. § 393(1). As an element of the offense the evidence of the prior conviction was highly relevant and not excludable under any rule. See M.R.Evid. 401, 403.

## VI

Finally, we address the defendant's contention that the trial court committed reversible error by its instructions on the definition of "control" and on the competing harms defense. We must read the jury instructions in their entirety to determine if they are adequate. *State v. Perry*, 486 A.2d 154, 156 (Me.1985); *State v. Sapiel*, 432 A.2d 1262, 1270 (Me.1981).

[10] *Definition of control*: 15 M.R.S.A. § 393(1) provides that a convicted felon shall not "own, have in his possession or under his control any firearm." The Maine Criminal Code does not define "control." In the instant case the trial court defined "control" in terms borrowed from the definition of "constructive possession" that we have employed when reviewing sufficiency of the evidence challenges to convictions for possession of contraband. See *State v. Lambert*, 363 A.2d 707, 711 (Me.1976); *State v. Gellers*, 282 A.2d 173, 178-80 (Me. 1971), cert. denied, 406 U.S. 949, 92 S.Ct. 2047, 32 L.Ed.2d 337 (1972). We note that the defendant's first proposed instruction defining "control," filed on the second day of trial, closely paralleled the instructions in fact given by the court and differed from it only marginally. Given the fact that both firearms were proven to be in the personal residence of the defendant for an extended period of time, the court's instructions appropriately directed the jurors' attention to whether the defendant was aware the firearms were there and had the ability, without restriction, to reduce them to his physical possession. In the circumstances of this case any shortcoming in the court's instruction on "control" was harmless.

*Competing harms defense*: Over the State's objection the court instructed the jury on the competing harms defense on Count I involving the July 23 incident. See 17-A M.R.S.A. § 103(1) (1983). The court further instructed the jury that it should not consider the competing harms defense "if the State has satisfied you that prior to the fight in the store Mr. Friel had already

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possessed or controlled the shotgun ...;  
and that he had previously been convicted  
of a felony." The defendant objected to  
the instruction, contending that possession  
or control prior to the fight in the store did  
not preclude the competing harms defense.

[11] The defendant is correct that posses-  
sion or control of a firearm prior to the  
fight in the store does not preclude the  
competing harms defense for his conduct  
following the fight. The indictment, how-  
ever, charged the defendant with posses-  
sion or control on or about July 23. If the  
jury found the defendant did not possess or  
control the gun prior to the fight in the  
store, then under the instructions as given  
it might find his conduct after the fight to  
be justified. If, however, the jury found  
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trolled the gun prior to the fight, the com-

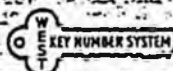
peting harms defense is inapplicable. See  
State v. Kee, 398 A.2d 384, 386 (Me.1979)  
(the competing harms defense requires  
"imminent physical harm" that is shown as  
a fact to exist).

We have carefully examined the defend-  
ant's remaining contentions and find them  
to be without merit.

The entry is:

Judgment affirmed.

All concurring.



REPRINT

SUBSTITUTE FOR  
SENATE BILL NO. 748

(As Passed the Senate June 5, 1986)

A bill to prohibit local units of government from providing for certain restrictions on the ownership, use, and possession of pistols, firearms, and ammunition for pistols or firearms.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 1. As used in this act:

2       (a) "Local unit of government" means a city, village, town-  
3 ship, or county.

4       (b) "Pistol" means a pistol as defined in section 222 of Act  
5 No. 328 of the Public Acts of 1931, being section 750.222 of the  
6 Michigan Compiled Laws.

7       Sec. 2. A local unit of government shall not impose special  
8 taxation on,       enact any ordinance or regulation pertaining to,  
or regulate in  
9 any other manner the ownership, registration, purchase, sale,  
10 transfer, transportation, carrying, or possession of pistols or  
11 other firearms, ammunition for pistols or other firearms, or

1 components of pistols or other firearms, except as otherwise  
2 provided in state or federal law.

DL685/SUB A

GENERAL COUNSEL

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY  
JANUARY SESSION, A.D. 1986

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AN ACT  
RELATING TO FIREARMS

Introduced By: Senators Sabatini, Wiesner, Acciardo, Miller and Marciano

Date Introduced: March 4, 1986

Referred To: Senate Committee on Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 11-47 of the general laws entitled, "Criminal  
2 Offenses" is hereby amended by adding the following section:

3 11-47-58. Firearms - State Pre-Emption. -- The control of fire-  
4 arms, ammunition or their component parts regarding their ownership,  
5 possession, transportation, carrying, transfer, sale, purchase, pur-  
6 chase delay, licensing, registration and taxation shall rest solely  
7 with the state, except as otherwise provided in this chapter.

8 SECTION 2. This act shall take effect upon passage.

DL685/SUB A

## FIREARMS-RELATED ACCIDENTS

According to the National Safety Council (NSC), there were some 1,600 accidental gun-related fatalities in 1985, and firearms accidents ranked seventh among types of accidental deaths, as they have for several years. (Accident Facts, 1986, pp. 6-7.) There is, however, a problem with the NSC ranking, since it is based entirely upon how one combines the various specific subcategories of the types of accidents. The more detailed breakdown supplied by the NSC (p. 12), using the latest official figures -- those for 1983 -- would suggest that unspecified firearms could rank 11th, shotguns 24th, and handguns 27th. In order, the official list of accidental death categories would read: motor vehicle; falls; conflagration; other and unspecified drowning, submersion; inhalation and ingestion of food, other object; poisoning by solids and liquids; complications and misadventures of surgical and medical care; water transport; air and space transport; poisoning by gases and vapors; other and unspecified firearm missile; excessive cold; mechanical suffocation; struck accidentally by falling object; electric current; agricultural machines; railway accidents; other and unspecified fire and flames; hunger, drowning in a bathtub; hunger, thirst, exposure and neglect; ignition of clothing; explosive material; striking against or struck by objects or persons; shotgun; other and unspecified machinery; other road vehicle; hand gun; etc. The NSC has simply made a determination to combine some categories and subcategories and consider them major and to combine others and lump them together as "other."

At any rate, of the 1,600 gun-related accidental fatalities reported for 1985, about 800 occurred in the home, down from 1,300-1,600 reported during most of the late-1960s and early-1970s; and about 700 occurred in public, down from 800-1,000 during the late-1960s and early-1970s. The NSC also estimates just over 300 hunting-related fatal accidents. There are no clear data on handgun involvement in gun-related accidents. The latest estimate, for 1983, is that 209 accidents were classified as involving handguns of a total of 1,695 firearms accidents during that year. But it is unclear how many of the "other and unspecified firearm missile" involved "other" firearms than the three somewhat narrow categories -- "handgun," "shotgun (automatic)," and "hunting rifle" -- and how many involved "unspecified" types of firearms. Handgun involvement would appear to be anywhere between 15 and 45 percent, with no way at this time to determine which. An additional problem, as noted by Professor Gary Kleck of Florida State University, is that some accidents may actually be disguised or misclassified suicides or even criminal homicides.

Roughly three-eighths of these accidents kill persons too young lawfully to acquire a handgun, with over a quarter too young to acquire any firearms lawfully. Most accidents involving adults result from carelessness and frequently from being under the influence of alcohol. There is no indication that they result from ignorance. As a policy matter, the only policy with likely benefits would come from increasing firearms safety instruction of school-age persons too young lawfully to acquire firearms.

The figure for gun-related injuries is much more difficult to calculate. It is based on projections from surveys of hospitals and of the public, rather than statistics collected by various agencies. Additional problems with making estimates are that some of the data overlap, involve minor injuries, or involve gun-related injuries which are not, however, caused by gunshot wounds. For example, the Consumer Product Safety Commission collects survey data on accidental injuries from hospital emergency rooms,

but those injuries include criminal injuries to persons ages 15 and under, and injuries where police are uncertain whether criminally or accidentally inflicted. And it has been estimated that only one-third of injuries from gun-related robberies are due to gunshot wounds (Philip J. Cook, "The Effect of Gun Availability on Violent Crime Patterns," 455 Annals, AAPSS 63, 74, May 1981). In addition, many gun-related injuries which require medical care are, nonetheless, minor. Again, in gun-related injuries from robberies, less than one-third of those requiring medical treatment required an overnight stay in the hospital, a figure which the CPSC says is true as well of accidental injuries -- even though gun-wound patients are frequently kept overnight more as a precaution related to concerns about shock than to clear necessity from the nature of the wounds.

The Consumer Product Safety Commission placed the number of gun-related accidental injuries at approximately 26,000 (including crime-related injuries suffered by victims 15 and under, and injuries of uncertain origin) in 1982, the last year they collected such information on firearms-related accidents. The National Safety Council, on the other hand, estimates 15,000 gun-related injuries (J. Sherwood Williams and B. Krishna Singh, "American Attitudes Toward Gun Laws: A Discriminant Analysis," American Society of Criminology, 1981). The most current data -- based on reporting of an unfortunately small proportion of accidental shooting deaths -- from the National Safety Council suggest handgun involvement is at most 45% on gun-related injuries. Projecting those data suggests, at most, 15,000 handgun and at least 20,000 long gun related accidental injuries, with perhaps 5,000 handgun and 7,000 long gun injuries serious enough to require hospitalization at least overnight.

#### Home Protection and Home Accidents

It has frequently been alleged that when a burglar is heard and a shot is fired, "more often than not it's a member of the family who is hit." This statement usually is modified to some statistical form suggesting that guns, or handguns, kept in the home for protection, are six -- or 43, or 118, or some other figure -- times more likely to be used against a loved one than against a criminal.

There are a number of problems with the statement, however it may be worded. For one thing, it assumes that unless someone is killed, a gun hasn't been "used" at all. Surveys -- commissioned by anti-gun organizations, as well as one commissioned by the NRA -- consistently show that well over one-third of a million Americans each year use handguns for protection from criminals; another 100,000+ long guns are used for protection. In contrast, there are a total of approximately 26,000 gun-related injuries of all kinds.

Next, the protective use is limited to "home" in many instances, although two surveys -- a national one by Caddell for an anti-gun organization, and one in California for the state Department of Justice -- indicate that many protective gun uses may occur outside the home. In the home, instead of 26,000 gun-related injuries and 1,600 deaths, the CPSC and NSC data suggest about 10,000 injuries and 800 fatalities from gun-related accidents. One-third of the injuries are serious enough to require hospitalization at least overnight. And handgun involvement in those deaths and injuries is unknown, with estimates in the 15-45% range.

In addition, the "protection" motivation is assumed, although there is no reason to believe that guns owned for protection are more likely to be involved in accidents than the vast majority of guns, and the majority of handguns, which are owned for reasons other than home protection. Indeed, the CPSC data, and a recent study of firearms

fatalities in North Carolina ("Accidental Firearm Fatalities in North Carolina, 1976-80," by P.L. Morrow and P. Hudson, AJPH, Sept. 1986) indicate that accidental injuries and deaths involving firearms, whether they occur in the home or elsewhere, increase in the hunting season. Except to anti-gun fanatics, this is to be expected; guns kept for protection will rarely be needed and hence rarely be handled. For an analogy, one would expect many more home accidents involving step ladders than the more-difficult-to-use but rarely touched rope (or chain, or folding) emergency fire escape ladder.

Moreover, the ratio may be skewed by efforts to distort the numerator (6, 43, 118, whatever) upward while simultaneously and deliberately minimizing the denominator. The denominator -- protective uses -- is most lowered, as mentioned, by ignoring all non-fatal uses of guns. It is further reduced in some of the ratios (6 and 43) by ignoring outside-the-home deaths, and in others (118, e.g.) by discounting all self-defense homicides and all justifiable homicides which involve persons who are family, friends, neighbors, or acquaintances.

With the 118-1 ratio, or with similar statements that there were only 100+ justifiable homicides, the FBI "justifiable homicide" data are used. But (1) those figures miss, in addition to all non-fatal protective uses of guns, at least three-fourths of the self-defense killings from the "justifiable" category. (G. Kleck, "Policy Lessons from Recent Gun Control Research," Law & Contemporary Problems, Winter 1986; P.H. Blackman and R.E. Gardiner, "Flaws in the Current and Proposed UCR Programs Regarding Homicide and Weapons Use in Violent Crime," American Society of Criminology convention, 1986.) (2) Those figures exclude justifiable homicides among all but perfect strangers. When a woman and her daughter, sexually harassed by a neighbor for weeks, finally have to kill him when he breaks in to attempt a rape, that is a justifiable homicide involving neighbors and not counted by the National Coalition to Ban Handguns -- except as one of the "bad" uses of guns, making up the numerator in the ratio. When an ex-wife, having fled a marriage to avoid constant brutality, is still beaten and forced to kill her former spouse, their relationship prevents NCBH from counting it as a justifiable homicide and it is included, again, in the numerator rather than the denominator. The fact that criminals frequently commit their burglaries, robberies, rapes, and assaults in their neighborhoods enhances the likelihood that protective shootings will involve persons in the "neighbor, acquaintance, other known" category of FBI data.

The allegations, however, go further. They suggest that a family member would be shot in response to a perceived burglar. Only two efforts to break down the circumstances of accidental shootings have been made, the first in 1964-65 by the Metropolitan Life Insurance Company (Kates, Restricting Handguns, 1979, p. 60.). It found no accidental handgun shootings involved a search for a prowler, and 1.4% of overall accidental shootings. Adding "scuffling for possession" brings total involvement to 4.2%, and to 10% of handgun accidents. It would appear, then, that at most three dozen deaths, and just over 100 injuries requiring hospitalization may involve using a handgun against a suspected burglar. The more recent, but less detailed, North Carolina study reported no accidents related to searching for a burglar, mistaking a child for a prowler, or the like. These compare to Prof. Gary Kleck's estimate of 1,200 criminals killed and 8,500+ injured by gun-wielding civilians. His data further suggested that over 85% of gun use against criminals involves burglary. And national survey and FBI justifiable homicide data suggest that handguns account for three-fourths of the protective use of guns each year.

## Children and Accidents

It is sometimes alleged that guns, or handguns, represent one of the leading causes of death among the young, and that regulations are justified on that basis. Usually, it is asserted that handguns represent about the third or fourth or fifth "leading" cause of death among the young. The statement is inaccurate.

FBI data on suspected criminal homicide with victims 14 years of age and younger indicate that about two-thirds of gun-related homicides involve handguns, for a total of approximately 150 in 1985. The National Safety Council data on accidents among those under 15 indicates 270 firearms-related accidental deaths in 1985; if handguns were involved in half of those (that is, more than in firearms accidents overall, possibly by a substantial margin), then there were 135 accidental handgun deaths involving the young. Handgun abuse, accidental and criminal, thus totals 285 lives lost, representing approximately 1/2 percent of the deaths of children 14 and under. (Most children below the age of 1 who die do so as a result of problems of childbirth and congenital anomalies; deaths among those under age 1 total over twice as many deaths as occur from all causes among those 1-14, almost 40,000 in 1984, the latest year in the Public Health Service reports, compared to fewer than 17,000 deaths among the 1-14 age group.)

In terms of general causes of deaths among the 0-14 age group, handguns (criminal and accidental abuse) rank 16th. (The following table is based on Table 8, Public Health Service's "Advance Report of Final Mortality Statistics, 1984" (Sept. 27, 1986), the National Safety Council's Accident Facts, 1985, the FBI Uniform Crime Report's Crime in the United States, 1984, and supplemental computer printouts from the FBI. All figures are for 1984 -- the latest possible date, and are approximate. They do not vary much from year to year.)

"Cause" of death, persons 0-14	Number	Percentage of deaths in the age group
1. Conditions of the perinatal period	18,850	33.7 %
2. Congenital anomalies	9,980	17.8
3. Motor vehicle accidents	8,100	14.5
4. Heart diseases	3,275	5.8
5. Cancer	1,885	3.3
6. Drowning	1,250	2.2
7. Fires, burns	1,150	2.1
8. Other accidents	1,100	2.0
9. Pneumonia	1,050	1.9
10. Criminal homicide (w/o handguns)	780	1.4
11. Meningitis	490	0.9
12. Septicemia	415	0.7
13. Misc. infectious and parasitic diseases	390	0.7
14. Suffocation, ingested object	350	0.6
15. Nephritis (kidney diseases)	335	0.6
16. Handgun homicide and accident	280	0.5

If deaths of children below the age of 1 were subtracted, handgun-related deaths would rank 11th, at 1 1/2%, of deaths, following: Motor vehicle accidents; cancer; congenital anomalies; drowning; other accidents; fires, burns; heart disease; criminal homicide without handguns; pneumonia; and suffocation, ingested object. (It should be noted that some deaths reportedly accidental may actually be due to child abuse but not

correctly classified as criminal homicide.)

If only handgun accidents -- numbering about 135 per year for children under 14 -- are considered, then, in addition to the other "causes" accounting for more deaths, there would be: cerebrovascular diseases, suicides, pulmonary diseases, anemias, meningococcal infection, intestinal infection, and hernia and other intestinal obstructions. Handgun accidents would then rank as the 23rd leading cause of death among children under 15, accounting for approximately  $1/4\%$  of the total.

### The Safety of the Shooting Sports

One issue frequently raised with regard to firearms is that of the safety of shooting sports, including hunting, target shooting, trap and skeet. Governmental bodies and interest groups occasionally argue against opening ranges on the grounds of safety; others claim hunting is a dangerous sport, etc. In point of fact, the shooting sports are among the safest sports around, in addition to being suitable sports not just for the physically fit, but for the physically impaired who might otherwise have few areas of recreational competition open to them.

Perhaps the best demonstration of the safety of competitive shooting is the absence of data on the issue of accidental injuries and deaths. And the data on hunting show it to be one of the safest sports for which injury and death data are published. Studies on injuries in athletic activities--inter- and intramural--at the secondary and collegiate level do not mention target shooting. There are virtually no injuries to report; what few may occur would be classified as "other." Insurance company reports on accidental injuries have no category for sport shooting, so few non-hunting recreational shooting accidents occur.

Most shooting ranges--target, trap, skeet--have virtually no accidents; the few which occur are most often due to defective arms or ammunition (either manufactured or with excessive charges in handloaded ammunition) and do not result in serious injury. Indeed, when the Consumer Product Safety Commission last collected information on firearms accidents -- in three categories, one of which was clearly limited to organized sport shooting, "skeet shooting (activity, apparel, or equipment)" -- the number of accidents in the sample was too small to estimate a national figure on the total number of accidents. The actual number reported in the National Electronic Injury Surveillance System (NEISS) was 3, putting such an activity on a par with accidents from electric blankets, ice cream makers, electric trains, and shuffleboard.

This does not mean that every range is safe, nor that there are not reports of stray rounds fired (which rarely--if ever--ever strike a human being). But, compared to other sports, sport shooting at ranges produces immeasurably small numbers of generally minor accidents. More injuries and deaths occur each year in organized running and swimming competition than in organized shooting competition. In terms of injuries, hunting is 3,000 times safer than football, and other organized sport shooting is probably 100 times safer than hunting.

The National Safety Council (Accident Facts, 1985, p. 75) estimated approximately 340 fatal hunting accidents per year and about 2250 non-fatal hunting accidents, including some not involving firearms. The estimates on injuries (not necessarily deaths) by type range from 59% for shotgun, to 31% for rifle, with the remainder involving handguns, muzzle-loading firearms, and bows-and-arrows. The rate of accidental deaths from hunting is put by the NSC at 1.2 per 100,000 licenses, although millions may

lawfully hunt without licenses. And, as with other activities -- such as driving cars -- those persons unlawfully participating without licenses are more apt to be involved in accidents. Comparable figures for participants in other sports include: 2.1 for boating, 43.3 for hang gliding, 0.4 for football, 82.9 for parachuting, 12.5 for professional boxing, 0.7 for snowmobiling, 2.1 for swimming, 0.3 for water skiing, 4.5 for scuba diving. (Accident Facts, 1986, p. 75.)

In terms of injuries, whether fatal or not, the hunter rate was 9.2 per 100,000 licenses, compared to : 3,498.5 for baseball, 1,804.9 for basketball, 26,801.3 for football, 107.8 for ice skating, 6,374.3 for parachuting, 372.7 for roller skating, 43.2 for scuba diving, 133.7 for snowmobiling, 220.3 for skiing, 133.3 for swimming, 116.0 for tennis, and 164.2 for water skiing.

There are simply no data on accidents in target, trap, and skeet shooting. Most fatal gun-related accidents occur in the home (around 50-60%) and are unrelated to organized sport shooting (10-15%). As a consumer product, guns are involved in 26,000 accidents requiring emergency-room treatment annually (about 40% in the home), one third of which require hospitalization, according to the Consumer Product Safety Commission. Among the sport-related consumer goods which rank ahead of guns are bicycles (574,000 injuries), basketball (458,000), football (433,000), baseball (432,000), skating (183,000), soccer (93,000), volleyball (78,000), fishing (65,000), wrestling (64,000), weight lifting and exercise equipment (58,000), gymnastics (53,000), playground equipment (53,000), skiing (43,000), squash and racquetball (35,000), and tennis (29,000). (CPSC, 1982 data, the last year firearms-related injury data were analyzed.)

Overall, persons are safer hunting than driving to and from the hunt; and they are safer at a properly constructed and supervised shooting range than on any school playground, at home, or at any business establishment.

# Bill of Rights reaffirmed 2 to 1

By AMY BERMAR  
Daily News reporter

Still good after all these years: That's the conclusion of nearly 200 Alaskans who say they want the same basic freedoms the Bill of Rights (the first 10 amendments to the Constitution) provided more than two centuries ago.

Many of Americans' most treasured rights — to bear arms, to receive equal legal treatment, to be tried by an impartial jury and to practice freedom of speech and religion — still are endorsed by a majority of 178 people surveyed last month by The Daily News.

But other constitutional protections fared less well.

The proscription against double jeopardy, or being tried twice for the same crime, was opposed by 42 percent of the respondents overall.

(Groups that voted it down included 33-to-55-year-olds; those who described themselves as "middle of the road" politically; and grade school graduates, those who completed

some high school and those who completed some advanced work — indicating that educational experience had little influence here.)

No other amendment encountered as much opposition, but some came close. Amendments on the shakiest ground included:

- The right not to incriminate oneself (19 percent disapproval overall; 28 percent disapproval among students with some high school education).

- Guaranteed protection against unreasonable search and seizure (23 percent disapproval overall; 32 percent disapproval among students ages 12 to 17).

- Freedom of the press (19 percent disapproval overall; 36 percent disapproval among people 55 years or older).

In the past, similar studies have been conducted around the country, with varying results.

Locally, overall approval for each amendment ranged from 80 to 90 percent. But various demographic groups — broken down

See Page D-3, BILL

Continued from Page D-1

by age, sex, education and political sympathy — disapproved of different amendments at rates of 15 to 50 percent.

"What makes America unique is the Bill of Rights," says former Attorney General John Havelock, who now directs the University of Alaska's Criminal Justice Center in Anchorage.

"What makes this country unique is your right to criticize without fear of being put in jail, and your right to say outrageous things without being penalized."

But the Bill of Rights might not exist today if it hadn't been for a group of single-minded citizens. The amendments were drafted only as a compromise between legislators who refused to sign the Constitution — which would shape the federal government — unless individual rights were protected.

er over time.

"The Bill of Rights enjoyed a renaissance in the 1930s," says Havelock. "There's been a tremendous reassertion of the importance of rights — not just as minorities have taken power, but as the country becomes more pluralistic.

"As there's less consensus about what the country's about, and what we're meant to do, in order to make the country work we need more and more laws. We're depending on laws to determine our roles and place in society."

Written by an aristocratic elite for an aristocratic elite, the Constitution didn't begin

to benefit the common citizen until the middle of this century, Havelock says.

By the 1950s, when Sen. Joseph McCarthy was conducting his investigations into "un-American activities," the Fifth Amendment, the right to prevent self-incrimination, was at stake. Witnesses who wouldn't talk faced charges of contempt. And the American people didn't protest until later.

"People don't understand the Bill of Rights," says Havelock.

large part of the population of what the American experiment is all about."

If citizens don't know the ideals underlying democracy, says Havelock, they may not defend them, either.

"Then, in times of crisis, it becomes easy, as it did during the McCarthy era, to say that these rights should not be granted."

The forced internment of Japanese-Americans during World War II is another example of "temporarily suspend-

ing to Dan Hickey, chief prosecutor for the state. (As district attorney, he must assure that defendants get a trial that's speedy, impartial and, if they desire, decided by a jury of their peers — three protections spelled out in the Bill of Rights.)

Havelock cites the current debate over prayers in schools as another example of public pressure modifying the bill's provisions — in this case, freedom of religion.

Despite this, the Bill of Rights remains intact, and its provisions have grown strong-

# Questionnaire garnered 176 responses on 18 Constitutional rights

This questionnaire was presented on a confidential basis to learn what randomly selected people in Anchorage think about constitutional issues. Respondents included students, housewives, the unemployed, teachers, salespeople, computer programmers and a commissioner of the State of Alaska.

The survey was conducted on three different days in various locations: downtown by the old city hall, in the Sears Mall and in the Dimond Center. Respondents were informed that The Daily News intended to publish the compiled results in a newspaper article. Dittman Research Corporation was consulted on methodology.

Two hundred people were given surveys; 176 completed them. The questions were as follows: (Results in parentheses.)

1. Do you feel adults should or should not be allowed to own guns and other weapons? (Should: 160 Should not: 16)

2. Do you believe you should or should not be required to let soldiers stay in your home, even if there is no war? (Should: 18 Should not: 158)

3. If you should be charged and tried for a crime, should or should not you be protected from being charged with the crime again? (Should: 102 Should not: 74)

4. If you are suspected of committing a

serious crime, do you feel your accuser should or should not have to show there is enough evidence you have committed the crime before you can be charged with breaking the law?

(Should: 155 Should not: 21)

5. Do you feel bail, fines and treatment in jail should or should not be controlled to prevent cruel conditions?

(Should: 153

Should not: 23)

6. Do you believe the government should or should not be able to take private property for public use without paying the owner a fair price?

(Should: 5 Should not: 171)

7. Do you believe there should or should not be a limit on the time that passes before a person is brought to trial after being charged with a crime?

(Should: 145

Should not: 31)

8. Do you believe everyone should or should not be entitled to the same legal treatment? (Should: 164 Should not: 12)

9. Do you feel you should or should not be forced to testify against yourself? (Should: 33 Should not: 143)

10. Do you believe Congress should or should not pass laws regarding religious practices? (Should: 28 Should not: 148)

11. Should or should not the government

oversee petitions people circulate, particularly if the petitions criticize government policies? (Should: 23 Should not: 153)

12. Do you believe people, homes, personal records and property should or should not be subject to search or confiscation whenever authorities think it necessary? (Should: 42 Should not: 134)

13. Do you feel newspapers, radio and television should or should not be able to publish or broadcast what they want to? (Should: 143 Should not: 33)

14. Do you think people should or should not be allowed to gather in groups of any size? (Should: 158 Should not: 13)

15. Do you feel that anyone accused of a crime should or should not be entitled to a trial by an impartial jury in the state where the crime was committed?

(Should: 164

Should not: 12)

16. Do you feel any areas other than those already delegated to the federal government by the Constitution should or should not be left to individual states to administer? (Should: 146 Should not: 30)

17. Do you feel the government should or should not be allowed to pass laws that contradict rights already granted?

(Should: 28 Should not: 148)

18. Do you feel people involved in lawsuits where more than \$300 is at stake

should or should not be allowed to request a jury trial? (Should: 148 Should not: 28)

Thirty-nine states have constitutional amendments on the right to keep and bear arms. Most recently, the states of New Hampshire and Nevada approved of constitutional amendments which stressed an individual right to bear arms. Both states' provisions were approved by over seventy percent of the voters in those states during the 1982 election.

Senator Orrin Hatch's Sub-Committee on the Constitution report, completed this past year, has documented the right to keep and bear arms as a major individual right of American citizens. The Senate Sub-Committee, charged with the responsibility of interpreting the Constitution for the Senate, stated that: "The conclusion is thus inescapable that the history, concept, and wording of the Second Amendment to the Constitution of the United States, as well as its' interpretation by every major commentator and court in the first half-century after its ratification, indicates that what is protected is an individual right of a private citizen to own and carry firearms in a peaceful manner."

Some have argued that the Second Amendment applies only to the Federal Government, and the states can adopt gun laws without worrying about it.

The Sub-Committee points out that the Bill of Rights was originally intended to limit only federal actions. The Sub-Committee observed that the three Supreme Court decisions holding that the Second Amendment does not apply to the states come from the last century when most of the rights found in the Bill of Rights (including freedom of speech) were considered not to be restrictions on the states.

The case continually cited by "gun control" advocates as the Supreme Court's definitive ruling against the individual's right to keep and bear arms is U.S. v. Miller, 307 U.S. 174 (1939). In that case, the Supreme Court implicitly recognized that the rights guaranteed by the Second Amendment protected all individuals and not merely those who are members of the militia.

In more recent years, state courts, like the Supreme Courts of Colorado (City of Lakewood v. Pillow), Oregon (State v. Kessler), and Montana (State v. Nickerson), and the Courts of Appeals in Indiana (Schubert v. DeBard), Missouri (Taylor v. McNeal), and New Mexico (City of Las Vegas v. Moberg), in interpreting state constitutional provisions similar to the Second Amendment, have concluded that the right to keep arms guarantees the right to keep and bear arms, such as pistols and revolvers, for self-defense.

In some cases, members of the legislature have expressed concern that the absence of language providing for legislative regulation in a right to arms amendment would preclude regulation of the right of arms.

Old and new cases have shown that reasonable regulation is permissible although a state constitutional guarantee does not contain language authorizing regulation of right.

Article II of the Arkansas Constitution guarantees: "The citizens of this State shall have the right to keep and bear arms for their common defense." Authority to regulate the right was upheld in Haile v. State, 38 Ark. 564, 567 (1882). Article I of the Alabama Constitution guarantees: "That every citizen has a right to bear arms in defense of himself and the state." In Hyde v. Birmingham, 392 So. 2d 1225 (Ala. Crim. App. 1980), the court stated the right was subject to reasonable regulation. Article I of the Oregon Constitution guarantees: "The people shall have the right to bear arms for the defense of themselves, and the State, but the Military shall be kept in strict subordination to the civil power." The right to arms was held to be subject to reasonable regulation in State v. Kessler, 614 P. 2d 94, 99 (Or. 1980).

The Sub-Committee concluded that "given the legislative history of the Civil Rights Acts, and the Fourteenth Amendment, and the more expanded views of incorporation which have become accepted in our own century, it is clear that the right to keep and bear arms was meant to be, and should be, protected under the civil rights statutes and the Fourteenth Amendment against infringement of officials acting under color of state law."

RUPE ANDREWS  
NRA FIELD REPRESENTATIVE  
8116 LONG RUN DRIVE  
JUNEAU, ALASKA 99801

THE PRECEDING PAGES WERE TREATED AS  
A UNIT IN THE ORIGINAL FILE.

DEPARTMENT OF THE TREASURY — BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS <b>FIREARMS TRANSACTION RECORD</b> <b>PART I — INTRA-STATE OVER-THE-COUNTER</b>	TRANSFEROR'S TRANSACTION SERIAL NUMBER
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NOTE: Prepare in original only. All entries on this form must be in ink. See Notices and Instructions on back.

**SECTION A — MUST BE COMPLETED PERSONALLY BY TRANSFEREE (BUYER) (See Notices and Instructions on reverse)**

1. TRANSFEREE'S (Buyer's) NAME (Last, First, Middle)	<input type="checkbox"/> MALE  <input type="checkbox"/> FEMALE	2. HEIGHT	3. WEIGHT	4. RACE
5. RESIDENCE ADDRESS (No., Street, City, State, ZIP Code)	6. DATE OF BIRTH		7. PLACE OF BIRTH (City and State or City and Foreign Country)	
6. DATE OF BIRTH				
MONTH    DAY    YEAR				
(Empty boxes for date entry)				

8. CERTIFICATION OF TRANSFEREE (Buyer) — An untruthful answer may subject you to criminal prosecution. Each question must be answered with a "yes" or a "no" inserted in the box at the right of the question:

a. Are you under indictment or information* in any court for a crime punishable by imprisonment for a term exceeding one year? *A formal accusation of a crime made by a prosecuting attorney, as distinguished from an indictment presented by a grand jury.		c. Are you a fugitive from justice?	
		d. Are you an unlawful user of, or addicted to, marijuana, or a depressant, stimulant, or narcotic drug?	
b. Have you been convicted in any court of a crime punishable by imprisonment for a term exceeding one year? (NOTE: A "yes" answer is necessary if the judge could have given a sentence of more than one year. Also, a "yes" answer is required if a conviction has been discharged, set aside, or dismissed pursuant to an expungement or rehabilitation statute. However, a "crime punishable by imprisonment exceeding one year" does not include a conviction which has been set aside under the Federal Youth Corrections Act, as evidenced by a copy of the certificate issued under 18 USC 5021.)		e. Have you ever been adjudicated mentally defective or have you ever been committed to a mental institution?	
		f. Have you been discharged from the Armed Forces under dishonorable conditions?	
		g. Are you an alien illegally in the United States?	
		h. Are you a person who, having been a citizen of the United States, has renounced his citizenship?	

I hereby certify that the answers to the above are true and correct. I understand that a person who answers "Yes" to any of the above questions is prohibited from purchasing and/or possessing a firearm, except as otherwise provided by Federal law. I also understand that the making of any false oral or written statement or the exhibiting of any false or misrepresented identification with respect to this transaction is a crime punishable as a felony.

TRANSFEREE'S (Buyer's) SIGNATURE	DATE
----------------------------------	------

**SECTION B — TO BE COMPLETED BY TRANSFEROR (SELLER) (See Notices and Instructions on reverse)**

THIS PERSON DESCRIBED IN SECTION A:     IS KNOWN TO ME  
    HAS IDENTIFIED HIMSELF TO ME IN THE FOLLOWING MANNER

9. TYPE OF IDENTIFICATION (Driver's license or identification which shows name, date of birth, place of residence, and signature.)	10. NUMBER ON IDENTIFICATION
--	------------------------------

On the basis of (1) the statements in Section A; (2) the verification of identity noted in Section B; and (3) the information in the current list of Published Ordinances, it is my belief that it is not unlawful for me to sell, deliver, transport, or otherwise dispose of the firearm(s) described below and on the back to the person identified in Section A.

11. TYPE (Pistol, Revolver, Rifle, Shotgun, etc.)	12. MODEL	13. CALIBER OR GAUGE	14. SERIAL NO.	15. MANUFACTURER (and importer, if any)
1.				
2.				

16. TRADE/CORPORATE NAME AND ADDRESS OF TRANSFEROR (Seller) (Hand stamp may be used)	17. FEDERAL FIREARMS LICENSE NO. (Hand stamp may be used)
--	---

**THE PERSON MAKING THE ACTUAL FIREARMS SALE MUST COMPLETE ITEMS 18 THROUGH 20**

18. TRANSFEROR'S (Seller's) SIGNATURE	19. TRANSFEROR'S TITLE	20. TRANSACTION DATE
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CONTINUATION OF ITEMS 11 THROUGH 15 FOR MULTIPLE PURCHASES OF FIREARMS (See Item 9 below)				
11. TYPE (Pistol, Revolver, Rifle, Shotgun, etc.)	12. MODEL	13. CALIBER OR GAUGE	14. SERIAL NO.	15. MANUFACTURER (and importer, if any)
3.				
4.				
5.				
6.				

Complete ATF F 3310.4 for multiple purchases of firearms (See item 10 below)

## NOTICES AND INSTRUCTIONS

### PAPERWORK REDUCTION ACT NOTICE

The information required on this form is in accordance with the Paperwork Reduction Act of 1980. The purpose of this information is to determine the eligibility of the buyer (transferee) to receive firearms under Federal law. The information is subject to inspection by ATF officers. The information on this form is required by 18 U.S.C. 922 and 923.

### IMPORTANT NOTICES TO TRANSFEROR (SELLER) AND TRANSFEE (BUYER)

1. Under 18 U.S.C. 921-928 and 18 U.S.C. Appendix 1201-1203, firearms may not be sold to or received by certain persons. The information and certification on this form are designed so that a person licensed under 18 U.S.C. 921-928 may determine if he may lawfully sell or deliver a firearm to the person identified in Section A, and to alert the transferee (buyer) of certain restrictions on the receipt and possession of firearms. This form should not be used for sales or transfers where neither person is licensed under 18 U.S.C. 921-928.

2. **WARNING**—The sale or delivery of a firearm by a licensee to an eligible purchaser who is acting as an agent, intermediary or 'straw purchaser' for someone whom the licensee knows or has reasonable cause to believe is ineligible to purchase a firearm directly, may result in a violation of the Federal firearm laws.

3. The transferee (buyer) of a firearm should be familiar with the provisions of law. Generally, 18 U.S.C. 921-928 prohibits the shipment, transportation or receipt in interstate commerce of a firearm by one who is under indictment or information for, or who has been convicted of, a crime punishable by imprisonment for a term exceeding one year, by one who is a fugitive from justice, by one who is an unlawful user of, or addicted to marijuana or a depressant, stimulant or narcotic drug, or by one who has been adjudicated mentally defective or who has been committed to a mental institution. In addition, 18 U.S.C. Appendix 1201-1203 generally makes it unlawful for anyone who has been convicted of a crime punishable by imprisonment for a term exceeding one year, who has been discharged from the Armed Forces under dishonorable conditions, who has been adjudicated mentally incompetent, who, having been a citizen of the United States, has renounced his citizenship, or who is an alien illegally in the United States, to possess a firearm.

**KNOW YOUR CUSTOMER**—Before a licensee may sell or deliver a firearm to a nonlicensee, the licensee must establish the identity, place of residence, and age of the buyer. Satisfactory identification should verify the buyer's name, date of birth, address, and signature. Thus, a driver's license or an identification card issued by a State in place of a license is particularly appropriate. Social Security cards are not acceptable because no address or date of birth is shown on the card. Also, alien registration receipt cards and military identification cards are not acceptable by themselves because the State of residence is not shown on the cards. However, although a particular document may not be sufficient to meet the statutory requirement for identifying the buyer, any combination of documents which together disclose the required information concerning the buyer is acceptable.

### INSTRUCTIONS TO TRANSFEE (BUYER)

4. The buyer (transferee) of a firearm will, in every instance, personally complete Section A of the form and certify (sign) that the answers are true and correct. However, if the buyer is unable to read and/or write, the answers may be written by other persons, excluding the dealer. Two persons (other than the dealer) will then sign as witnesses to the buyer's answers and signature.

5. When the transferee (buyer) of a firearm is a corporation, company, association, partnership or other such business entity, an officer authorized to act on behalf of the business will complete and sign Section A of the form and attach a written statement, executed under penalties of perjury, stating

- that the firearm is being acquired for the use of and will be the property of that business entity, and
- the name and address of that business entity.

### INSTRUCTIONS TO TRANSFEROR (SELLER)

6. Should the buyer's name be illegible the seller shall print the buyer's name above the name printed by the buyer.

7. The transferor (seller) of a firearm will, in every instance, complete Section B of the form.

8. Additional firearms purchases made by the same buyer may not be added to this form after the seller has signed and dated it.

9. If more than six firearms are involved, the identification required by Section B, Items 11 through 15, must be provided for each firearm. The identification of the firearms transferred in a transaction which covers more than six weapons may be on a separate sheet of paper which must be attached to the form covering the transaction.

10. In addition to completing this record, you must report any multiple sale or other disposition of pistols or revolvers on ATF F 3310.4 in accordance with 27 CFR 178.126a.

11. The transferor (seller) of a firearm is responsible for determining the lawfulness of the transaction and for keeping proper records of the transaction. Consequently, the transferor should be familiar with the provisions of 18 U.S.C. 921-928 and 18 U.S.C. Appendix 1201-1203, and the Federal firearms regulations, Title 27, Code of Federal Regulations, Part 178.

12. After you have completed the firearm transaction, you must make the completed, original copy of the ATF F 4473. Part I part of your permanent firearms records including any supporting documents. Filing may be chronological (by date), alphabetical (by name), or numerical (by transaction serial number), so long as all of your completed Forms 4473, Part I are filed in the same manner.

### DEFINITIONS

1. **Intra-State Over-the-Counter Transaction**—The sale or other disposition of a firearm by the transferor (seller) to a transferee (buyer) who is a resident of the State in which the transferor's business is located, occurring on the transferor's business premises.

2. **Published Ordinances**—The publication (ATF P 5300.5) containing State firearms laws and local ordinances which is annually distributed to Federal firearms licensees by the Bureau of Alcohol, Tobacco and Firearms.

While the 1968 law and the revisions last year include provisions that bar certain people, such as convicted felons and drug addicts, from purchasing guns, there is no way salesmen can validate an applicant's qualifications.

Proponents of a waiting period contend it would give the police a chance to check the credentials of purchasers.

A gun bill that emerged from the Senate Judiciary Committee in 1982 included a 14-day waiting period, but the measure never reached the floor. (1982 *Almanac* p. 415)

Gun groups oppose the waiting period, claiming it is an unnecessary inconvenience and amounts to assuming a potential buyer is guilty until proved innocent.

Other firearms issues likely to emerge in this Congress include:

- **Ammunition Ban.** Rep. Mario Biaggi, D-N.Y., introduced a bill (HR 533) Jan. 8 to roll back provisions in the 1986 law that lifted licensing and record-keeping requirements on the interstate shipment of ammunition.

Biaggi's bill would ban in-state shipments except by federally licensed dealers, manufacturers, exporters and importers, and collectors shipping to one another.

Gun Owners of America seized upon the changes in the 1986 law, sending out mailings to members offering them special over-the-phone deals on ammunition.

Biaggi says the problem with mail-order ammunition is that there is no way to make sure it is not being sold to people who are prohibited by law from buying it. For example, no one under 18 is permitted to buy ammunition for rifles or shotguns, and no one under 21 can buy ammunition for handguns.

Pratt contends the bill is anti-consumer, but a Biaggi spokesman calls that "absurd."

"We fully support the rights of citizens to own and use firearms," he says. "We're looking for reasonable controls. . . . We're looking to help the law enforcement community."

- **Bullet Ban.** Sen. Daniel Patrick Moynihan, D-N.Y., has introduced a bill (S 25) to ban the production of .25 and .32 caliber bullets. Moynihan says a survey of shootings involving New York City police from 1975-85 showed that 25 percent of the bullets used were .25 or .32 caliber.

Gun groups flatly oppose the bill, and even some gun control advocates, while praising Moynihan's effort,

think it may not be effective because it would prompt a shift to guns using different bullets.

- **Plastic Guns.** Rep. Robert J. Mrazek, D-N.Y., is planning to introduce a bill that would impose a "flexible ban" on plastic guns. The bill would ban the domestic manufacture or importation of any firearm the secretary of the Treasury determines cannot be detected by security devices.

### Battles in Local Jurisdictions

In addition to its work on Capitol Hill, the NRA expects to be involved in several legislative battles on the state level. Last year, according to Ted Lattanzio, head of the NRA's State and Local Affairs Division, the NRA donated more than \$750,000 to state and local candidates. Lattanzio says 83 percent of the NRA-supported candidates were elected.

A key item on the NRA's agenda is pushing "pre-emption" legislation that would prevent cities and counties from enacting gun control laws more

stringent than statewide laws.

Lattanzio says legislation will be introduced on behalf of the NRA in 16 states, with highly visible fights expected in Michigan and Florida.

The NRA will be up against law enforcement groups in this arena as well. Spokesmen say the police groups will organize to defeat the pre-emption statutes.

Detroit officer Scully, who worked to stop a statute in Michigan last year, says, "We don't want to take local control away from city or county governments. That's a ploy by the NRA that cuts down on the individual police chief's [ability to do] his job."

Another legislative push — one that won't put the NRA at odds with the police — is a "hunter-harassment" proposal. Bills will be introduced in 13 states to create stiff civil penalties for people who try to interfere with lawful hunting. Lattanzio says it is aimed at animal rights groups that have published a "21-point pamphlet on how to stop a lawful hunt." ■

## Hastings Responds to Charges

Federal District Judge Alcee L. Hastings of Florida has filed a two-pronged response to impeachment charges, stemming from his acquittal in 1983 on bribery charges.

Hastings, who is black, denounced the disciplinary procedure being used against him, saying it was "infected by a form of racism" and had more in common with a Moscow political trial than an American judicial proceeding. He claimed that the entire investigation and the underlying bribery prosecution were biased and were "conducted in a manner . . . to provide just cause for outrage as well as alarm."

The 11th U.S. Circuit Court of Appeals, which includes Florida, began investigating Hastings shortly after his acquittal. A special 11th Circuit investigative committee recommended that Hastings be removed from office, on the grounds that he had fabricated his defense and should have been convicted. The 11th Circuit accepted those findings and forwarded them to the Judicial Conference, which gave Hastings a chance to respond. (1986 *Weekly Report* p. 2280)

On Jan. 16 he petitioned the House and Senate to terminate the judicial investigation and to repeal or amend the 1980 judicial discipline law (PL 96-458) that is the basis for the probe.

The Judicial Conference is scheduled to meet in March and could decide then whether to end the investigation or to forward the impeachment recommendation to Congress.

Hastings' Senate petition was quickly referred to the Judiciary Committee, but as of Jan. 22, his House petition was still at the Speaker's office.

Rep. Robert W. Kastenmeier, D-Wis., who helped draft the 1980 discipline law, said in an interview Jan. 21 that it was unclear what Congress would do with the Hastings petition. Kastenmeier said he believed that the Judicial Conference should be allowed to proceed and either forward an impeachment recommendation to Congress or drop the matter.

Kastenmeier added, however, that he had intended to take another look at the judicial discipline law in the 100th Congress, even before Hastings suggested that.

ing in stealth tactics, night rescues and infiltration. "We need to teach these high-school graduates with their football letters from East Cupcake, Neb., a little bit about being streetwise," he barks. From now on, all Marine sentries will carry loaded rifles—one way to possibly avoid a recurrence of the tragic bombing in Beirut where Marines with unloaded weapons watched helplessly as a bomb-loaded car smashed into their compound, killing 241.

Gray has disdain for Marines who jog "in cute little silk shorts." He favors a much tougher approach, conditioning troops by forced marches with backpacks. Training for marathons—which to the hosts of Washington's annual Marine Corps Marathon has become something of an obsession—is a waste of time, he says. "I'm a hell of a lot more interested in a Marine who can carry a wounded Marine across the battlefield." He is indifferent to spit and polish. "I don't give a shit how you look," he tells enlisted men. "I care how you are." Gray himself feels uncomfortable in dress blues and prefers to be photographed in his camouflage fatigues, or "utilities" as Marines call them. Indeed, mottled brown-green is almost a fetish with Gray. In his office, he drinks coffee from a camouflage-painted canteen cup. His troops gave him a camouflaged spittoon for his chaw, and at dedication ceremonies for new facilities Marines now use camouflage ribbon.

**Painted baseball bat:** Wielding a camouflage-painted baseball bat—inscribed "Big Stick"—Gray roams Marine headquarters in Washington armed for combat with the "little old ladies in tennis shoes who stand in the way of progress." He means Pentagon bureaucrats who resist his reforms. To his shock and anger, Marine Corps officials have disregarded some of his orders because they were delivered verbally—not written in quintuplicate.

Just how willing Gray is to bypass the bureaucrats could be seen after his pep talk at Cherry Point. A hulking sergeant beseeched Gray for a waiver of weight restrictions—usually a matter for the bureaucrats—that threatened to force the sergeant from the corps. The commandant promptly dropped to the floor in three-point stance. "You play football?" he demanded. "Gimme a stance." The startled sergeant just gaped. Gray stood up: "You play backfield or line?" he asked. "Backfield," the sergeant replied, recovering his composure. "I can run over a guy your size," he boasted. Gray shot back: "Do it." Discretion prevailed. "No, sir," said the sergeant. Gray asked him how fast he could run a hundred yards. "Ten seconds," claimed the sergeant. "Tell you what," Gray ruled. "You do the hundred in 10.1 and I'll keep you around."

RICHARD SANDZA at Cherry Point, N.C.



MARTY KATZ

Deadly symbol of status and power: A 15-year-old from Baltimore and his Beretta

## Kids: Deadly Force

Gunfights are replacing fistfights as firearms become a major problem in the nation's schools

*Two weeks before Christmas Day, 17-year-old Kendall Merriweather was shot and killed a few blocks from his high school in southeast Washington, D.C. Police arrested two teenage students who they believe killed Merriweather while trying to steal his "boom box" radio.*

*A few days earlier in Pasadena, Texas, a 14-year-old eighth grader at Deepwater Junior High School whipped a snub-nosed .38 out of his jacket and held the assistant principal hostage for two hours. Police said the boy was distraught over his parents' recent separation.*

*Last week late-evening commuters found the bullet-ridden body of 13-year-old Rolando Mattie at an Oakland, Calif., bus stop. Police believe the seventh-grade dropout was a crack dealer and are looking for five suspects—most of them Mattie's age—in connection with the murder.*

These were not isolated incidents. All across America, the number of kids using—and being harmed by—guns is rising at an alarming rate. According to the U.S. Department of Justice, more than 27,000 youths between 12 and 15 were handgun victims in 1985 (the most recent figures), up from an average of 16,500 for each of the three previous years. But officials admit that as grim as those statistics are, they grossly understate the extent of the problem. In recent years, city streets have become flooded with unregistered and untraceable handguns, available to anyone of any age with a bit of cash. In New York,

revolvers can be bought on street corners for as little as \$25. Some dealers are even willing to "rent" a gun for an evening, deferring payment until the teen can raise money through muggings and robberies. Youth gangs in Los Angeles protect their turf with black-market Uzi submachine guns and Russian-made AK-47 assault rifles, easily financed by the crack trade. Children who live outside urban areas have an even cheaper source of firearms: dad's closet. In California, 38 percent of all households contain a gun. Often, parents don't realize that their .357 magnum or shotgun is missing. "Guns seem to be enjoying a new chic," says handgun expert Garen Wintemute, a Sacramento physician. "The increased prevalence of gun carrying among students is reflective of an increased general interest in guns in this country."

Nowhere is the proliferation of firearms among youths more startling than in city high schools. In Baltimore last spring, newly appointed Circuit Judge Ellen Heller was so shocked at the number of minors charged with gun crimes that she ordered a survey of weapon use among students. The results were even worse than she expected. Of 390 city high schoolers polled, 64 percent said they knew someone who had carried a handgun within the preceding six months; 60 percent knew someone who had been shot, threatened or robbed at gunpoint in their school; almost half of the male respondents admitted to having carried a handgun at least once.

Cities with far fewer gun incidents than



# **CORRECTION**

**THIS DOCUMENT  
HAS BEEN REPHOTOGRAPHED  
TO ASSURE LEGIBILITY**

ing in stealth tactics, night rescues and infiltration. "We need to teach these high-school graduates with their football letters from East Cupcake, Neb., a little bit about being streetwise," he barks. From now on, all Marine sentries will carry loaded rifles—one way to possibly avoid a recurrence of the tragic bombing in Beirut where Marines with unloaded weapons watched helplessly as a bomb-loaded car smashed into their compound, killing 241.

Gray has disdain for Marines who jog "in cute little silk shorts." He favors a much tougher approach, conditioning troops by forced marches with backpacks. Training for marathons—which to the hosts of Washington's annual Marine Corps Marathon has become something of an obsession—is a waste of time, he says. "I'm a hell of a lot more interested in a Marine who can carry a wounded Marine across the battlefield." He is indifferent to spit and polish. "I don't give a shit how you look," he tells enlisted men. "I care how you *are*." Gray himself feels uncomfortable in dress blues and prefers to be photographed in his camouflage fatigues, or "utilities" as Marines call them. Indeed, mottled brown-green is almost a fetish with Gray. In his office, he drinks coffee from a camouflage-painted canteen cup. His troops gave him a camouflaged spittoon for his chaw, and at dedication ceremonies for new facilities Marines now use camouflage ribbon.

**Painted baseball bat:** Wielding a camouflage-painted baseball bat—inscribed "Big Stick"—Gray roams Marine headquarters in Washington armed for combat with the "little old ladies in tennis shoes who stand in the way of progress." He means Pentagon bureaucrats who resist his reforms. To his shock and anger, Marine Corps officials have disregarded some of his orders because they were delivered verbally—not written in quintuplicate.

Just how willing Gray is to bypass the bureaucrats could be seen after his pep talk at Cherry Point. A hulking sergeant beseeched Gray for a waiver of weight restrictions—usually a matter for the bureaucrats—that threatened to force the sergeant from the corps. The commandant promptly dropped to the floor in three-point stance. "You play football?" he demanded. "Gimme a stance." The startled sergeant just gaped. Gray stood up: "You play backfield or line?" he asked. "Backfield," the sergeant replied, recovering his composure. "I can run over a guy your size," he boasted. Gray shot back: "Do it." Discretion prevailed. "No, sir," said the sergeant. Gray asked him how fast he could run a hundred yards. "Ten seconds," claimed the sergeant. "Tell you what," Gray ruled. "You do the hundred in 10.1 and I'll keep you around."

RICHARD SANDZA at Cherry Point, N.C.



MARTY KATZ

Deadly symbol of status and power: A 15-year-old from Baltimore and his Beretta

## Kids: Deadly Force

Gunfights are replacing fistfights as firearms become a major problem in the nation's schools

*Two weeks before Christmas Day, 17-year-old Kendall Merriweather was shot and killed a few blocks from his high school in southeast Washington, D.C. Police arrested two teenage students who they believe killed Merriweather while trying to steal his "boom box" radio.*

*A few days earlier in Pasadena, Texas, a 14-year-old eighth grader at Deepwater Junior High School whipped a snub-nosed .38 out of his jacket and held the assistant principal hostage for two hours. Police said the boy was distraught over his parents' recent separation.*

*Last week late-evening commuters found the bullet-ridden body of 13-year-old Rolando Mattie at an Oakland, Calif., bus stop. Police believe the seventh-grade dropout was a crack dealer and are looking for five suspects—most of them Mattie's age—in connection with the murder.*

These were not isolated incidents. All across America, the number of kids using—and being harmed by—guns is rising at an alarming rate. According to the U.S. Department of Justice, more than 27,000 youths between 12 and 15 were handgun victims in 1985 (the most recent figures), up from an average of 16,500 for each of the three previous years. But officials admit that as grim as those statistics are, they grossly understate the extent of the problem. In recent years, city streets have become flooded with unregistered and untraceable handguns, available to anyone of any age with a bit of cash. In New York,

revolvers can be bought on street corners for as little as \$25. Some dealers are even willing to "rent" a gun for an evening, deferring payment until the teen can raise money through muggings and robberies. Youth gangs in Los Angeles protect their turf with black-market Uzi submachine guns and Russian-made AK-47 assault rifles, easily financed by the crack trade. Children who live outside urban areas have an even cheaper source of firearms: dad's closet. In California, 38 percent of all households contain a gun. Often, parents don't realize that their .357 magnum or shotgun is missing. "Guns seem to be enjoying a new chic," says handgun expert Garen Wintemute, a Sacramento physician. "The increased prevalence of gun carrying among students is reflective of an increased general interest in guns in this country."

Nowhere is the proliferation of firearms among youths more startling than in city high schools. In Baltimore last spring, newly appointed Circuit Judge Ellen Heller was so shocked at the number of minors charged with gun crimes that she ordered a survey of weapon use among students. The results were even worse than she expected. Of 390 city high schoolers polled, 64 percent said they knew someone who had carried a handgun within the preceding six months; 60 percent knew someone who had been shot, threatened or robbed at gunpoint in their school; almost half of the male respondents admitted to having carried a handgun at least once.

Cities with far fewer gun incidents than



MARK RICHARDS—PICTURE GROUP



MARK RICHARDS—PICTURE GROUP

More than enough guns to go around: Los Angeles gang members show their stuff



Trying to teach a lesson: Baltimore poster

Baltimore still have plenty to worry about. Twenty years ago, the baddest kid in school carried a switch-blade. But today packing a pistol is a symbol of status and power that others quickly emulate. This snowball effect is reinforced by the climate of fear that a single firearm in the classroom generates. As with adults, many students who say they have no criminal intent start carrying guns to protect themselves from gun-toting class bullies. The child who thinks he's protecting himself, however, is actually putting himself in more danger. Statistics show that kids (and adults) with guns are more likely to be shot than those without guns. "A gun can give someone a sense of power and a security blanket," says Houston psychologist Rion Hart. "They haven't really thought out what they're going to do with it until something happens. But then it's too late." Suddenly, "he said, she said" hallway disputes that were once settled with fists or the flashing of a knife blade end in a burst of firepower and a bloody corpse.

Quick on the trigger: That was how 15-year-old Dartagnan Young died. A freshman at DuSable High School on Chicago's South Side, Young accused a 16-year-old schoolmate of slapping his girlfriend. The schoolmate pulled out a .32 revolver and started shooting. As students looked on in horror, Young staggered through the crowded hallway, blood pouring from his chest. He died at the hospital. Often, even less provocation is needed before the bullets begin to fly. "You gotta be prepared—people shoot you for your coat, your rings, chains, anything," says a 15-year-old junior-high-school student in Baltimore, proudly displaying his .25-caliber Beretta.

Much of the increase in gun use stems from urban crack trade. "These [crack]

gangs have more firearms than a small police department," says William Newberry, a Bureau of Alcohol, Tobacco and Firearms agent based in Los Angeles. Police say it's typical for street crime to spill over into schools. In ghettos more profound forces may be at work. Children who grow up in broken homes and in the grip of poverty can come to see guns as their only available ticket to prosperity and self-esteem. At the same time, constant exposure to violence on TV and on the streets can inure them to the reality of what a bullet can do. "Kids don't care, and they feel life has little value," says Clementine Barfield, whose son Derick was among the 77 youths 16 and under shot dead in Detroit over the past two years. Barfield started SOSAD (Save Our Sons And Daughters) to help other parents overcome their grief and raise awareness of the problem. "We've got to fight for social change, just like we did in the '60s," she says. "We're losing a whole generation of children."

'Make my day': Smaller cities and towns are not immune. Last August a 12-year-old boy in Corpus Christi, Texas, wounded a stockbroker on a crowded downtown street. What most shocked the victim was the way the kid blew the smoke out of his barrel, Clint Eastwood style, then got on his bike and rode away. In De Kalb, Mo., 12-year-old Nathan Faris brought his father's .45 semi-automatic to school one day, seeking revenge on a classmate who had taunted him for being fat. Faris accidentally shot a 13-year-old who tried to protect the intended victim, then shot himself in the head. Dr. Deborah Protinrow-Stith, commissioner of the Massachusetts Department of Public Health, attributes outbursts like these to a society too tolerant of violence. "We show that fighting is glamorous on TV—it is rewarded and chosen by the hero as the first solution to a problem," she says. "There's no sorrow, no lamenting when the 'make my day' attitude is put into action."

Whatever the cause, authorities are finding the use of guns by youngsters an extremely difficult trend to stop. Metal detectors, spot searches and increased security have failed to keep guns out of the classroom. Police say it is even harder to keep handguns away from kids on the street. The city of Boston recently launched a TV ad campaign with shocker tag lines such as, "When you tell a friend to fight, you might as well be killing him yourself." But it will take more than commercials to keep schools from becoming modern-day Dodge Cities. As long as pistols are almost as easy to get as candy from a vending machine, people of all ages will continue to end up on both ends of the barrel.

GEORGE HACKETT with RICHARD SANDZA in Washington, FRANK GIBNEY Jr. in Houston, ROBIN GAREISS in Chicago and bureau reports



F. Sheffield, Governor

**DEPARTMENT OF LAW**

OFFICE OF THE ATTORNEY GENERAL

POUCH K - STATE CAPITOL  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3600

May 8, 1986

The Honorable M. Mike Miller  
Alaska State Legislature  
P.O. Box V  
Juneau, Alaska 99811

Dear Representative Miller:

You have asked this office to comment upon the effect of "legislative intent" language currently contained in a resolution now under consideration by the House Judiciary Committee: CS SJR 39 (Jud) am. This resolution, if passed, would place a proposed constitutional amendment before the voters at the next general election. The resolution contains an amendment to art. I, sec. 19 of the state constitution, relating to a citizen's right to keep and bear arms. The stated purpose of the proposed amendment is to establish that the right to keep and bear arms under the state constitution is an individual right, rather than a collective one.

The proposed constitutional amendment now states that a citizen's right to keep and bear arms "shall not be infringed by the state or by a borough or city of the state." During consideration of CS SJR 39 (Jud) am on the Senate floor Senator Vic Fischer proposed an amendment which would have added the phrase "except that the manner of keeping and bearing arms may be regulated by law." This proposed amendment was rejected by the Senate on a vote of 16 to 2. See Senate Journal, March 26, 1986, at pp. 2166-2167. The Judiciary Committee version of the resolution, adopted with amendment by the Senate, contains a section entitled "legislative intent." Section 2 of CS SJR 39 (Jud) am now provides, in part, that the proposed constitutional amendment "should not be construed to preclude the regulation of the manner in which arms may be borne, carried, or used."

We are concerned that the language presently contained in CS SJR 39 (Jud) am might allow later constitutional challenge to some existing state statutes. Present law, for example, prohibits a convicted felon from possessing a concealable firearm, prohibits possession of certain weapons such as bombs, hand grenades, silencers, and sawed-off shot guns, prohibits possession of a firearm while intoxicated, the discharge of a firearm from, on, or across a highway, the carrying of a concealed weapon, possession of a loaded firearm

on licensed premises, or possession of a firearm by a minor without parental consent. (See AS 11.61.200-11.61.220.)

These statutes serve an important public safety function by restricting the possession of especially dangerous weapons or weapons carried in an especially dangerous manner or place. If the legislature does not intend that the proposed amendment of art. I, sec. 19 would render these statutes unenforceable, nor foreclose a future legislature from adopting similar provisions (prohibiting possession of loaded firearms in a church or on school grounds, for example), then the legislature's intent to continue to allow reasonable regulation by law should be made clear.

It may be that the Senate, in rejecting the amendment proposed by Senator Fischer but adopting section 2 of CS SJR 39 (Jud) am, believed that it was not necessary to explicitly state in the proposed constitutional provision that regulation of firearms by law is allowed, as this point is included in their "legislative intent" language. As a general rule, however, a measure will be enforced according to the plain meaning of the language on its face. 2A C. Sands, Sutherland Statutory Construction § 45.02 at 4 (4th ed. 1984); Wilson v. Municipality of Anchorage, 669 P.2d 569, 571 (Alaska 1983). It is a "fundamental principle of statutory interpretation ... that a statute means what its language reasonably conveys to others..." North Slope Borough v. Sohio Petroleum Corp., 585 P.2d 534, 540 (Alaska 1978); South Central Health Planning v. Commissioner, Dept. of Administration, 628 P.2d 551, 553 (Alaska 1981). 1/

While the courts in Alaska may consider a measure's legislative history to the extent it may assist the court in correctly interpreting the measure, a legislative committee report or formal statement of legislative intent may not be used to give the statute a meaning not fairly contained within its words. Chicago, M., St. P. & P. R. Co. v. Acme Fast Freight, 336 U.S. 465, 93 L.Ed.2d 817, 69 S.Ct. 692 (1949); North Slope Borough, 585 P.2d at 540.

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1/ Although general rules of legal interpretation are most often expressed in the context of statutory interpretation, the same rules apply to the interpretation of legislative resolutions and constitutional amendments. 1A C. Sands, Sutherland Statutory Construction § 29.08 at 500 (4th ed. 1985).

When a reviewing court decides that it must consider the legislature's intent in order to construe a provision, the text of the measure itself is still considered the best evidence of legislative intent. See 2A C. Sands, Sutherland Statutory Construction § 46.03 at 82 (4th ed. 1984) and the cases cited there. Where the terms of a provision are clear and straightforward, the intent of the legislature will be based on those terms, even if the apparent intent conflicts with a statement of legislative intent or a committee report. See Caminetti v. United States, 242 U.S. 470, 61 L.Ed. 442, 37 S.Ct. 192 (1917) and 2A C. Sands, Sutherland Statutory Construction § 48.06 at 308 (4th ed. 1984).

In Commercial Fisheries Entry Commission v. Apokedak, 680 P.2d 486 (Alaska 1984) Apokedak, relying upon legislative intent language contained in the "preamble" to the Limited Entry Act, urged the state supreme court not to adopt a literal construction of the act. The court refused to adopt the interpretation suggested by Apokedak, stating: "a statutory preamble ... can neither restrain nor extend the meaning of an unambiguous statute; nor can it be used to create doubt or uncertainty which does not otherwise exist." 680 P.2d at 488, n.3. Thus, to the extent that language contained in the "legislative intent" section of CS SJR 39 (Jud) am conflicts with the plain meaning of the terms of the constitutional provision, it is the constitutional language which will control.

The courts may also consider the history of legislative action taken on a given measure when determining legislative intent. Generally, the rejection of a proposed amendment indicates that the legislature did not intend the bill to include the provisions embodied in the rejected amendment. Lapina v. Williams, 232 U.S. 78, 58 L.Ed. 515, 34 S.Ct. 196 (1914); United States v. Great Northern Railway Co., 287 U.S. 144, 155, 77 L.Ed. 223, 53 S.Ct. 28 (1932); 2A C. Sands, Sutherland Statutory Construction § 48.04 at 302, § 48.18 at 341 (4th ed. 1984). Thus, a reviewing court may well conclude that if the legislature had intended to allow the continued regulation by law of some aspects of a person's right to possess arms it would have adopted the language proposed by Senator Fischer during the Senate's consideration of the resolution. See, e.g., North Slope Borough, 585 P.2d at 541; Wilson, 669 P.2d at 571.

Perhaps the most important consideration here is that in the case of a measure (such as this one) which is to be decided by a vote of the electorate, descriptive statements accompanying the proposition are an important source of

guidance for interpretation. 2A C. Sands, Sutherland Statutory Construction § 48.04 at 301, § 48.19 at 345 (4th ed. 1984); State v. Lewis, 559 P.2d 630, 637-638 (Alaska 1977), cert. denied, 97 S.Ct. 2943, 432 U.S. 901, 53 L.Ed.2d 1073.

Under art. XIII, sec. 1 of the Alaska Constitution, the lieutenant governor is required to prepare a ballot title and a summary of the proposed constitutional amendment. The election pamphlet prepared pursuant to AS 15.58.010 must contain: 1) the text of the proposed constitutional amendment, 2) the ballot title and summary prepared by the lieutenant governor, 3) "a neutral summary" of the proposition prepared by the Legislative Affairs Agency, and 4) advocatory statements for and against the proposed amendment. AS 15.58.020(6). Thus, although the resolution directs the Legislative Affairs Agency to "consider" the statement contained in section 2 of CS SJR 39 (Jud) am when preparing its neutral summary for the ballot, this language will not appear on the ballot, and may well not appear in the elections pamphlet. Since, in the final instance, a reviewing court will look to the intent in the minds of the voters who voted to adopt the constitutional amendment, the legislature's statement of its intent when placing the measure on the ballot has limited significance. Lewis, 559 P.2d at 637-638.

One of the main purposes of a constitution is to limit legislative power. Ordinary acts of the legislature (i.e., statutes), whether adopted before or after a given constitutional provision, cannot be given effect if the statute conflicts with a substantive provision in the constitution. Thus, an amendment to the constitution may expressly, or by implication, repeal existing legislative enactments. Rhode Island v. Palmer, 253 U.S. 350, 64 L.Ed. 946, 40 S.Ct. 486 (1919); 1A C. Sands, Sutherland Statutory Construction § 23.20 at 387 (4th ed. 1985). The possibility that the language proposed in SJR 39 could be interpreted as invalidating some portions of Alaska's present criminal code is a real one, as this has occurred in similar circumstances in other states. See, for example, State v. Kessler, 289 Or. 359, 614 P.2d 94 (1980) and State v. Delgado, 298 Or. 395, 692 P.2d 610 (1984).

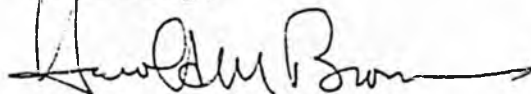
Principals of both common sense and responsible draftsmanship dictate that a well-drafted statute or constitutional provision should reduce the need for disputes about interpretation. 2A C. Sands, Sutherland Statutory Construction § 45.02 at 5 (4th ed. 1984). Statements of "legislative intent" are not an adequate substitute for clear, unambiguous language in the proposed constitutional amendment. A more precisely drafted amendment would minimize the

The Honorable M. Mike Miller  
Alaska State Legislature

May 8, 1986  
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possibility that, should the proposed constitutional amendment be adopted, a criminal defendant would later be able to argue that a criminal weapons misconduct statute is unconstitutional because it violates his right to keep and bear arms under art. I, sec. 19 of the state constitution.

Sincerely,

A handwritten signature in cursive script, appearing to read "Harold M. Brown", with a long horizontal flourish extending to the right.

Harold M. Brown  
Attorney General

**STATE CONSTITUTIONAL GUARANTEES ON  
THE RIGHT TO KEEP AND BEAR ARMS**

Forty-one (41) states have constitutional guarantees on the right to keep and bear arms.

Alabama: That every citizen has a right to bear arms in defense of himself and the state. Article I, Section 26.

Alaska: A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed. Article I, Section 19.

Arizona: The right of the individual citizen to bear arms in defense of himself or the State shall not be impaired, but nothing in this section shall be construed as authorizing individuals or corporations to organize, maintain, or employ an armed body of men. Article 2, Section 26.

Arkansas: The citizens of this State shall have the right to keep and bear arms for their common defense. Article II, Section 5.

Colorado: The right of no person to keep and bear arms in defense of his home, person and property, or in aid of the civil power when thereto legally summoned, shall be called in question; but nothing herein contained shall be construed to justify the practice of carrying concealed weapons. Article II, Section 13.

Connecticut: Every citizen has a right to bear arms in defense of himself and the state. Article I, Section 15.

Florida: The right of the people to keep and bear arms in defense of themselves and of the lawful authority of the state shall not be infringed, except that the manner of bearing arms may be regulated by law. Article I, Section 8.

Georgia: The right of the people to keep and bear arms, shall not be infringed, but the General Assembly shall have the power to prescribe the manner in which arms may be borne. Article I, Section I, para. VIII.

Hawaii: A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed. Article I, Section 15.

Idaho: The people have the right to keep and bear arms, which right shall not be abridged; but this provision shall not prevent the passage of laws to govern the carrying of weapons concealed on the person, nor prevent passage of legislation providing minimum sentences for crimes committed while in possession of a firearm, nor prevent passage of legislation providing penalties for the possession of firearms by a convicted

felon, nor prevent the passage of legislation punishing the use of a firearm. No law shall impose licensure, registration or special taxation on the ownership or possession of firearms or ammunition. Nor shall any law permit the confiscation of firearms, except those actually used in the commission of a felony. Article I, Section 11.

Illinois: Subject only to the police power, the right of the individual citizen to keep and bear arms shall not be infringed. Article I, Section 22.

Indiana: The people shall have a right to bear arms, for the defense of themselves and the State. Article I, Section 32.

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

Kentucky: All men are, by nature, free and equal, and have certain inherent and inalienable rights, among which may be reckoned: \*\*\* 7. The right to bear arms in defense of themselves and of the state, subject to the power of the general assembly to enact laws to prevent persons from carrying concealed weapons. Kentucky Bill of Rights, Section I, para. 7.

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

Maine: Every citizen has a right to keep and bear arms for the common defense; and this right shall never be questioned. Article I, Section 16.

Massachusetts: The people have a right to keep and bear arms for the common defense. And as, in times of peace, armies are dangerous to liberty, they ought not to be maintained without the consent of the legislature; and the military power shall always be held in an exact subordination to the civil authority, and be governed by it. Massachusetts Declaration of Rights, Part I, Article XVII.

Michigan: Every person has a right to keep and bear arms for the defense of himself and the state. Article I, Section 6.

Mississippi: The right of every citizen to keep and bear arms in defense of his home, person, or property, or in aid of the civil power where thereto legally summoned, shall not be called in question, but the legislature may regulate or forbid carrying concealed weapons. Article 3, Section 12.

Missouri: That the right of every citizen to keep and bear

arms in defense of his home, person and property, or when lawfully summoned in aid of the civil power, shall not be questioned; but this shall not justify the wearing of concealed weapons. Article I, Section 23.

Montana: The right of any person to keep or bear arms in defense of his own home, person, and property, or in aid of the civil power when thereto legally summoned, shall not be called in question, but nothing herein contained shall be held to permit the carrying of concealed weapons. Article II, Section 12.

Nevada: Every citizen has the right to keep and bear arms for security and defense, for lawful hunting and recreational use and for other lawful purposes. Art. 1, Section II, para. 1.

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

New Mexico: No law shall abridge the right of the citizen to keep and bear arms for security and defense, for lawful hunting and recreational use and for other lawful purposes, but nothing herein shall be held to permit the carrying of concealed weapons. No municipality or county shall regulate, in any way, an incident of the right to keep and bear arms. Article II, Section 6.

North Carolina: A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed; and, as standing armies in time of peace are dangerous to liberty, they shall not be maintained, and the military shall be kept under strict subordination to, and governed by, the civil power. Nothing herein shall justify the practice of carrying concealed weapons, or prevent the General Assembly from enacting penal statutes against that practice. Article I, Section 30.

North Dakota: All individuals are by nature equally free and independent and have certain inalienable rights, among which are ... to keep and bear arms for the defense of their person, family, property, and the state, and for lawful hunting, recreational, and other lawful purposes, which shall not be infringed. Article I, Section 1.

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

Oklahoma: The right of a citizen to keep and bear arms in defense of his home, person, or property, or in aid of the civil power, when thereunto legally summoned, shall never be prohibited; but nothing herein contained shall prevent the

Legislature from regulating the carrying of weapons. Article 2, Section 26.

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

Pennsylvania: The right of the citizens to bear arms in defence of themselves and the State shall not be questioned. Article I, Section 21.

Rhode Island: The right of the people to keep and bear arms shall not be infringed. Article I, Section 22.

South Carolina: A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed. As, in times of peace, armies are dangerous to liberty, they shall not be maintained without the consent of the General Assembly. The military power of the State shall always be held in subordination to the civil authority and be governed by it. No soldier shall in time of peace be quartered in any house without the consent of the owner nor in time of war but in the manner prescribed by law. Article I, Section 20.

South Dakota: The right of the citizens to bear arms in defense of themselves and the state shall not be denied. Article VI, Section 24.

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

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

Utah: The individual right of the people to keep and bear arms for security and defense of self, family, others, property, or the State, as well as for the other lawful purposes shall not be infringed; but nothing herein shall prevent the legislature from defining the lawful use of arms. Article I, Section 6.

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

Virginia: That a well regulated militia, composed of the

body of the people, trained to arms, is the proper, natural, and safe defense of a free state, therefore, the right of the people to keep and bear arms shall not be infringed; that standing armies, in time of peace, should be avoided as dangerous to liberty; and that in all cases the military should be under strict subordination to, and governed by, the civil power. Article I, Section 13.

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

West Virginia: A person has the right to keep and bear arms for the defense of self, family, home, and state, and for lawful hunting and recreational use. Article III, Section 22.

Wyoming: The right of citizens to bear arms in defense of themselves and of the state shall not be denied. Article I, Section 24.

#### STATES WITHOUT CONSTITUTIONAL PROVISIONS:

Nine (9) states do not have a constitutional provision on arms: California, Delaware, Iowa, Maryland, Minnesota, Nebraska, New Jersey, New York, and Wisconsin.

STATE OF ALASKA  
1988 LEGISLATIVE SESSION

BILL VERSION: SJR 15  
PUBLISH DATE: 2/12/87

FISCAL NOTE

REQUEST:

Revision Date: 1/22/88  
Title: Constitutional amendments relating to the right of a citizen to keep and bear  
Sponsor: RODEY firearms.  
Requestor: House State Affairs  
Agency Affected: Office of the Governor  
BRU: Division of Elections  
Components: II - Primary & General Elections

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	0	2.2*	0	0	0	0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	2.2*	0	0	0	0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	2.2*	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

\* Costs included cover 2 to 3 additional pages in each Official Election Pamphlet, for printing and typesetting, and costs estimated to cover computer programming requirements for vote (cont.)

Prepared by: Linda Edgeworth Phone: 465-4611  
Division: Elections Date: 1/22/88

Approved by Commissioner: [Signature] Date: 2/1/88  
Agency: Office of the Governor, Division of Elections

Distribution (by preparer): 2/1/88  
Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

Governor's Criminal Justice Working Group

January 14, 1988

The Honorable Fran Ulmer  
Chair, State Affairs Committee  
Alaska State Legislature  
P.O. Box V  
Juneau, Alaska 99811

Dear Representative Ulmer:

As you may be aware, the Governor has appointed the undersigned representatives of various state and local agencies to an ad hoc working group on criminal justice. The members of the group meet together on a regular basis to consider, and occasionally to comment upon, issues that could affect the fair and efficient administration of criminal justice in Alaska.

At the end of the last session, the Senate adopted CS for Senate Joint Resolution 15 (Judiciary), which proposes an amendment to the Constitution of the State of Alaska. We understand that CS SJR 15 (Jud) has been referred to the House State Affairs Committee for consideration. We are writing as a body to strongly urge you and your fellow representatives to amend the language of the present resolution to clearly preserve the present power to reasonably regulate the possession and use of arms.

If passed by the legislature, CS SJR 15 (Jud) would place a proposed constitutional amendment before the voters at the next general election. The resolution contains an amendment to art. I, sec. 19 of the state constitution, relating to a citizen's right to keep and bear arms. As presently drafted, SJR 15 would make the following changes in the state constitution:

SECTION 19. RIGHT TO KEEP AND BEAR ARMS. The [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.

The stated purpose of the proposed amendment is to establish that the right to keep and bear arms under the state constitution is an individual right, rather than a collective one. We are concerned that the present language, if adopted by the voters at the next election, might allow later constitutional challenge to some existing state statutes. Present law, for example, prohibits a convicted felon from possessing a concealable firearm, prohibits possession of certain weapons such as bombs, hand grenades, silencers, and sawed-off shotguns,

# **CORRECTION**

**THIS DOCUMENT  
HAS BEEN REPHOTOGRAPHED  
TO ASSURE LEGIBILITY**

STATE OF ALASKA  
1988 LEGISLATIVE SESSION

BILL VERSION: SJR 15  
PUBLISH DATE: 2/12/87

FISCAL NOTE

REQUEST:

Revision Date: 1/22/88  
Title: Constitutional amendments relating to the right of a citizen to keep and bear  
Sponsor: RODEY firearms.  
Requestor: House State Affairs  
Agency Affected: Office of the Governor  
BRU: Division of Elections  
Components: II - Primary & General Elections

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	0	2.2*	0	0	0	0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	2.2*	0	0	0	0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	2.2*	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

\* Costs included cover 2 to 3 additional pages in each Official Election Pamphlet, for printing and typesetting, and costs estimated to cover computer programming requirements for vote (cont.)

Prepared by: Linda Edgeworth Phone: 465-4611  
Division: Elections Date: 1/22/88

Approved by Commissioner: [Signature] Date: 2/1/88  
Agency: Office of the Governor, Division of Elections

Distribution (by preparer): 2/1/88  
Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SJR 15

counting purposes. However, these costs are based on the assumption that all candidates and issues will fit on three ballot cards, which is the norm. It should be noted, however that should the inclusion of this issue require a 4th ballot to be printed, the cost increase would have to be calculated at 16 cents per ballot x approximately 320,000 voters. The total cost of printing the additional ballot card would be \$51.2.

Under these circumstances the fiscal note would be:

53.4

Governor's Criminal Justice Working Group

January 14, 1988

The Honorable Fran Ulmer  
Chair, State Affairs Committee  
Alaska State Legislature  
P.O. Box V  
Juneau, Alaska 99811

Dear Representative Ulmer:

As you may be aware, the Governor has appointed the undersigned representatives of various state and local agencies to an ad hoc working group on criminal justice. The members of the group meet together on a regular basis to consider, and occasionally to comment upon, issues that could affect the fair and efficient administration of criminal justice in Alaska.

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The stated purpose of the proposed amendment is to establish that the right to keep and bear arms under the state constitution is an individual right, rather than a collective one. We are concerned that the present language, if adopted by the voters at the next election, might allow later constitutional challenge to some existing state statutes. Present law, for example, prohibits a convicted felon from possessing a concealable firearm, prohibits possession of certain weapons such as bombs, hand grenades, silencers, and sawed-off shotguns,

prohibits possession of a firearm while intoxicated, the discharge of a firearm from, on, or across a highway, the carrying of a concealed weapon, possession of a loaded firearm on licensed premises, or possession of a firearm by a minor without parental consent. (See AS 11.61.200-11.61.220.)

These statutes serve an important public safety function by restricting the possession of especially dangerous weapons or weapons carried in an especially dangerous manner or place. If the legislature does not intend that the proposed amendment of art. I, sec. 19 would render these statutes unenforceable, nor foreclose a future legislature from adopting similar provisions (prohibiting possession of loaded firearms in a church or on school grounds, for example), then the legislature's intent to continue to allow reasonable regulation by law should be made clear.

We suggest the addition of language such as: "The right of the people to keep and bear arms shall not be infringed, except that the state or a political subdivision of the state may regulate the manner in which arms may be borne, carried, or used." or "...except that the manner of keeping and bearing arms may be regulated by law."

Section 2 of CS SJR 15 (Jud) contains a statement of "legislative intent" indicating that the constitutional amendment, if adopted, "should not be construed to preclude the regulation of the manner in which arms may be borne, carried, or used." We are concerned, however, that this statement of legislative intent will not be effective to preserve the present power to reasonably regulate the possession and use of weapons.

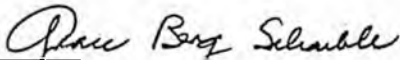
As a general rule, a statute or constitutional provision will be interpreted according to the plain meaning of the language on its face. If the intent behind the adoption of the amendment were to later become an issue, it is the intent of the voters who adopted the measure, rather than the intent of the legislators who drafted it, that will be relevant. Although the resolution directs the Legislative Affairs Agency to consider the statement contained in section 2 when preparing its neutral summary for the election pamphlet, the intent language will not appear on the ballot itself, and may well not be contained verbatim in the election pamphlet. See art. XIII, sec. 1 of the Alaska Constitution and AS 15.58.010.

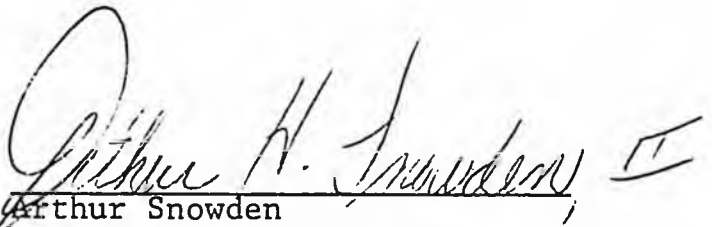
Principles of both common sense and responsible draftsmanship dictate that a well-drafted statute or constitutional provision should reduce the need for disputes about

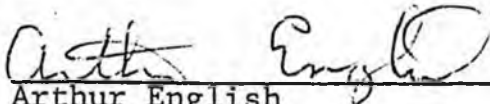
interpretation. Statements of "legislative intent" are not an adequate substitute for clear, unambiguous language in the proposed constitutional amendment. A more precisely drafted amendment would minimize the possibility that, should the proposed constitutional amendment be adopted, a criminal defendant would later be able to argue that a criminal weapons misconduct statute is unconstitutional because it violates his right to keep and bear arms under art. I, sec. 19 of the state constitution.

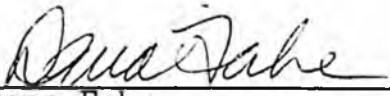
We urge you to amend CS SJR 15 (Jud) to address the concerns discussed above.

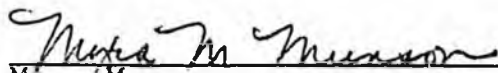
Sincerely yours,

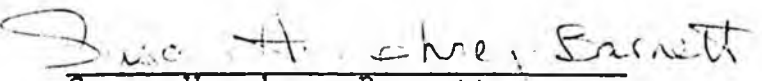
  
\_\_\_\_\_  
Grace Berg Schaible  
Attorney General


  
\_\_\_\_\_  
Arthur Snowden  
Administrative Director  
Alaska Court System

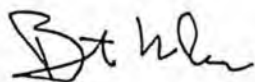
  
\_\_\_\_\_  
Arthur English  
Commissioner  
Department of Public Safety

  
\_\_\_\_\_  
Dana Fabe  
Public Defender

  
\_\_\_\_\_  
Myra Munson  
Commissioner  
Department of Health &  
Social Services

  
\_\_\_\_\_  
Susan Humphrey-Barnett  
Commissioner  
Department of Corrections

  
\_\_\_\_\_  
Del Smith  
President  
Alaska Association of Chiefs  
of Police

  
\_\_\_\_\_  
Brant McGee  
Public Advocate

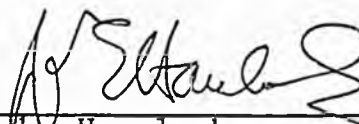
The Honorable Fran Ulmer  
Chair, State Affairs Committee

January 14, 1988  
Page 4



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Harold M. Brown  
Executive Director  
Alaska Judicial Council



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John Havelock  
Consultant on Criminal  
Justice Planning

cc: All members of the House State Affairs Committee  
John Sund, Chair, House Judiciary Committee

# ALASKA PEACE OFFICERS ASSOCIATION

State APOA Office • P.O. Box 240106 • Anchorage, AK 99524-0106 • (907)786-1807



## EXECUTIVE DIRECTOR

M. James Messick

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Greg Carpenter

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Mike Chapman

Valdez  
John Nealon

Ketchikan  
LeRoy Mestas

Petersburg  
Scott Eddy

February 15, 1988

The Honorable Fran Ulmer  
Chair, State Affairs Committee  
Alaska State Legislature  
P. O. Box V  
Juneau, AK 99811

Dear Fran:

I am writing concerning Senate Joint Resolution 15 which proposes an amendment to the Constitution of the State of Alaska. The resolution has been referred to the House State Affairs Committee.

On January 14, 1988, the Alaska Peace Officers Association Board of Directors formally received the proposed resolution. At the conclusion of the review a motion was unanimously passed opposing Senate Joint Resolution 15.

Our concern with this amendment change is that the door could be conceivably left open to eliminate other laws currently on the books. Laws such as felon in possession of a handgun, possession of weapons by intoxicated persons, carrying concealed weapons, etc. We feel these are fair and justifiable laws that are obviously needed.

As you are probably aware, a majority of our members are gun enthusiasts. We are engaged in many activities such as hunting, target shooting, trap shooting and almost any sporting activity relating to guns and weapons. We do not feel our current constitution prohibits or dampens any legitimate activity in relation to these activities.

Therefore, if the machine is not broken, why fix it. We do not feel the current constitution infringes upon any person or group, the right to bear arms. It does, however, allow the state to control the possession of weapons by certain people such as felons and people under the influence. It also allows the state to control certain classes of weapons, such as bombs, silencers, sawed-off shotguns, switchblade knives and the like.

ANCHORAGE POLICE DEPARTMENT EMPLOYEES ASSOCIATION  
3111 C Street, Suite 325  
Anchorage, Alaska 99503

The Honorable Fran Ulmer  
Chair, State Affairs Committee  
Alaska State Legislature  
P.O. Box V  
Juneau, Alaska 99811

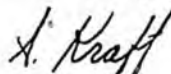
Dear Representative Ulmer,

I am writing concerning Senate Joint Resolution 15 which proposes  
as amendment to the Constitution of the State of Alaska.

We oppose this amendment. We feel our current constitution does  
not restrict the lawful purchase, possession or use of weapons.  
As it is now written it also allows for controls on dangerous  
and illegal weapons and weapons related activities. We find these  
laws to be reasonable and necessary. Our concern with the pro-  
posed resolution is that its "legislative intent" could be broadly  
and loosely interpreted resulting in the elimination of some of  
the laws vital to public safety.

Since the current constitution has worked so well for so long why  
change it now?

Sincerely,



Alan Kraft  
A.P.D.E.A. President

JY:lgd

# Alaska Association Chiefs of Police

March 16, 1988

MAR 24 1988

*Interesting  
point of view.*



Representative John Sund  
Chairman  
House Judiciary Committee  
Alaska State Legislature  
P.O. Box V (M.S. 3100)  
Juneau, Alaska 99811

Dear Representative Sund,

It is my understanding that CS for CSSJR 15 has been assigned to your committee for consideration. Various representatives of the Alaska Peace Officers Association and the Alaska Chiefs of Police Association have expressed concern in the past regarding this particular piece of legislation. The current wording of CS for CSSJR 15 allays some of those concerns that we previously held. I understand, however, that at least three members of House State Affairs attached a note to the bill stating their preference for the original language of the SJR 15. I want to assure you that neither the Alaska Chiefs of Police Association nor the Alaska Peace Officers Association are opposed to the individual right to keep and bear arms. We are, however, concerned that this particular piece of legislation could open a "Pandora's box" that may lead to court challenges to municipal and state statutes and ordinances regarding the carrying and/or use of firearms. We have testified that we felt that amendments were needed in the original submission of SJR 15 that would preclude court interpretations that would prohibit the enforcement of firearms statutes or ordinances. I do not believe that SJR 15 in any form is needed at this point in time because I do not perceive the threat that representatives of the National Rifle Association see. However, if some form of SJR 15 is going to be on the ballot, I would prefer the wording currently utilized in CS for CSSJR 15.

Thank you for your attention in this matter. If I can be of any assistance in your deliberations regarding this, please do not hesitate to contact me.

Sincerely,

*Del Smith*

Del Smith, President  
Alaska Chiefs of Police Association

ANALYSIS OF SJR 15

Claim: SJR 15 not needed; Second Amendment provides protection to gun owners.

Consider the opinion handed down in State v. Friel, 508 A.2d 123 (Me. 1986):

"The Second Amendment is inapplicable to this case; it operates as a restraint solely upon the power of the national government and does not restrict the power of the states to regulate firearms."

Other cases culminating with the same decision:

- Miller v. Texas, 153 U.S. 535 (1894)
- Presser v. Illincis, 116 U.S. 252 (1886)
- Quilici v. Village of Morton Grove, 695 F.2d 261 (1983)
- U.S. v. Kozerski, 740 F.2d 952 (1st Cir. 1984)
- State v. Sanne, 116 N.H. 583 (1976)
- State v. Skinner, 189 Neb.57 (1973)

Additionally, in State v. Skinner, the Nebraska Supreme Court ruled that the Second Amendment to the U.S. Constitution guarantees the right to keep and bear arms to an organized militia, not individuals.

This aspect of the Skinner decision is quite similar to the April 13, 1983, opinion of Alaska Attorney General Norman C. Gorsuch on the meaning of Article I, Section 19, of the Alaska Constitution, stating: "The modern judicial view has increasingly found that the guaranteed right to keep and bear arms is not an individually protected right, but rather a collective right which allows the people of the various states to serve in a militia."

Claim: Individual language in SJR 15 will allow felons to own/possess firearms.

Courts in states with "individual" constitutional guarantees have consistently rejected challenges to state statutes restricting or denying the possession of firearms by convicted felons:

(State: Citation; Constitutional Language; Proscription By Felons.)

- North Dakota: State v. Ricehill, 415 N.W.2d 481 (1987); "All individuals...."; ownership or possession of firearms.
- Maine: State v. Friel, 508 A.2d 123 (1986); "Every citizen...."; possession of firearm.
- Kentucky: Eary v. Commonwealth, 659 S.W.2d 198 (1983); "All men...."; possession of handgun.
- Alabama: Bristow v. State, 418 So.2d 927 (1982); "Every citizen...."; possession of pistol.
- Wyoming: Carfield v. State, 649 P.2d 865 (1982); "The right of citizens...."; possession of any firearm.

- Texas: Shepperd v. State, 586 S.W.2d 500 (1979); "Every citizen...."; possession of firearm away from residence.
- Louisiana: State v. Amos, 343 So.2d 166 (1977); "Each citizen...."; possession of firearms.
- Colorado: People v. Blue, 544 P.2d 385 (1975); "The right of no person to keep and bear arms...."; possession of firearms.
- Washington: State v. Tully, 89 P.2d 517 (1939); "The individual citizen...."; possession of pistol.

In addition to the cases cited above, courts in Georgia, Oregon, and Arizona have also rejected challenges based on state constitutional keep-and-bear-arms provisions to statutes making illegal a felon's possessing a firearm.

Claim: SJR 15 will invalidate reasonable laws currently on the books

Specifically mentioned have been laws regulating the carrying of concealed weapons and proscribing possession of firearms by intoxicated persons. As above, numerous citations can be offered indicating that courts regularly and routinely rule that the right to bear arms is subject to reasonable regulation:

(State: Citation; Decision.)

- Wyoming: State v. McAdams, 71 P.2d 1236 (1986); concealed carrying of arms subject to regulation.
- Oregon: State v. Delgado, 692 P.2d 610 (1984); legislature may regulate possession and use of arms.
- Indiana: Schubert v. DeBard, 398 N.E.2d 1339 (1980); license may be required to carry a pistol concealed.
- Oregon: State v. Kessler, 614 P.2d 94 (1980); concealed weapon carrying regulations permissible.
- Colorado: People v. Garcia, 595 P.2d 228 (1979); carrying a gun while drunk is outside the protected boundaries of the right to bear arms.
- North Carolina: State v. Dawson, 159 S.E.2d 1 (1968); open carrying for unlawful purposes may be prohibited.
- Kentucky: Holland v. Commonwealth, 294 S.W.2d 83 (1956); limits carrying of concealed weapons.
- Idaho: State v. Hart, 157 P.2d 72 (1945); upholds statutes prohibiting the carrying of concealed weapons.

CONSTITUTIONAL LANGUAGE  
FROM STATES WHOSE COURTS HAVE UPHELD  
REASONABLE REGULATIONS ON THE RIGHT TO KEEP AND BEAR ARMS

WYOMING: The right of citizens to bear arms in defense of themselves and of the state shall not be denied. Article I, Section 24.

OREGON: The people shall have the right to bear arms for the defense of themselves, and the State, but the Military shall be kept in strict subordination to the civil power. Article I, Section 27.

INDIANA: The people shall have a right to bear arms, for the defense of themselves and the State. Article I, Section 32.

COLORADO: The right of no person to keep and bear arms in defense of his home, person and property, or in aid of the civil power when thereto legally summoned, shall be called in question; but nothing herein contained shall be construed to justify the practice of carrying concealed weapons. Article II, Section 13.

NORTH CAROLINA: A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed; and, as standing armies in time of peace are dangerous to liberty, they shall not be maintained, and the military shall be kept under strict subordination to, and governed by, the civil power. Nothing herein shall justify the practice of carrying concealed weapons, or prevent the General Assembly from enacting penal statutes against that practice. Article I, Section 30..

KENTUCKY: All men are, by nature, free and equal, and have certain inherent and inalienable rights, among which may be reckoned: \*\*\* 7. The right to bear arms in defense of themselves and of the state, subject to the power of the general assembly to enact laws to prevent persons from carrying concealed weapons. Kentucky Bill of Rights, Section I, para. 7.

NORTH DAKOTA: All individuals are by nature equally free and independent and have certain inalienable rights, among which are ... to keep and bear arms for the defense of their person, family, property, and the state, and for lawful hunting, recreational, and other lawful purposes, which shall not be infringed. Article I, Section 1.

MAINE: Every citizen has a right to keep and bear arms and this right shall never be questioned. Article I, Section 16.

ALABAMA: That every citizen has a right to bear arms in defense of himself and the state. Article I, Section 26.



Official Business

# Alaska State Legislature

## House

COMMITTEE ON STATE AFFAIRS

P.O. BOX V  
State Capitol  
Juneau, Alaska 99811

March 15, 1988

Dear NRA Member:

A few days ago you received a mailing from the Washington, D.C. office of the National Rifle Association requesting you to contact me regarding SJR 15, proposing an amendment to the Constitution of the State of Alaska relating to the right of a person to keep and bear arms. The letter claimed that the resolution had been "bottled up" in my committee and that I "single handedly" was restricting the progress of this resolution. To put it bluntly, that letter was wrong.

The Alaska Peace Officers Association, made up of law enforcement officials all over the state of Alaska asked for clarification in SJR 15 that reasonable regulation of the methods of carrying firearms (convicted felons, concealed weapons, etc.) would not be precluded. Such a clarification was also requested by the Alaska Criminal Justice Working Group which includes the Department of Public Safety, the Attorney General, the Court System, and others. I think they have legitimate concerns and a right to express them and I am not going to preclude their opportunity to testify just because some guy in Washington, D.C. doesn't care how we do things here in Alaska.

For your information, three hearings have been held on this resolution by the State Affairs Committee which I chair. On February 17, we heard from Senator Rodey, the sponsor of SJR 15, and from representatives of the National Rifle Association. On the 29th of February, we heard additional testimony from the NRA and from the Alaska Peace Officers Association. On March 2, we took the remaining testimony on the resolution, this time hearing from the Department of Law and the Department of Public Safety. We have held three hearings in the space of two weeks time, spending 2-1/2 hours of the committee's time on this resolution. The committee has made a serious effort to understand the complex legal issues involved and to hear from all interested parties. This does not constitute "bottling up" a resolution in committee. On the contrary, it should demonstrate to you my sincere interest in being fair to all those who would like to testify.

At the conclusion of the last hearing, I assured the sponsor I would bring the resolution back before the committee as soon as I could obtain some compromise language. We worked out an amendment and on Wednesday, March 9, the State Affairs Committee

March 15, 1988

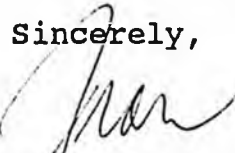
passed out a House Committee Substitute for CS SJR 15 which accommodates the concerns of law enforcement officials. I have enclosed a copy for your information, along with the letter from the Alaska Criminal Justice Working Group.

If you have any doubts about the record on this resolution or my good faith efforts to produce a constitutionally viable amendment, I hope that you will contact your local NRA representative, Rupe Andrews, for verification of my efforts on behalf of developing a good compromise. Sometimes communication between Juneau and Washington, D.C. is less than perfect. I'm afraid in this instance it was misleading and needs to be corrected. As an owner of three firearms and as an individual who was raised pheasant hunting with her father, I very much resent the suggestion that I am somehow "anti-gun" or that I am restricting the passage of legislation.

I have never had an organization accuse me of this before and I must say I am surprised that the NRA sent out a mailing of this sort based on the record that I have. It has always been my policy to be fair to fellow legislators and organizations who are interested in holding a hearing on bills. That includes Senator Rodey, SJR 15, and the NRA.

If you have any additional questions about this issue or would like any other information, please call.

Sincerely,



Fran Ulmer  
Representative



NATIONAL RIFLE ASSOCIATION OF AMERICA  
INSTITUTE FOR LEGISLATIVE ACTION  
1600 RHODE ISLAND AVENUE, N.W.  
WASHINGTON, D. C. 20036

PRESERVE YOUR RIGHT TO KEEP AND BEAR ARMS IN ALASKA  
SUPPORT S.J.R. 15, THE CONSTITUTIONAL AMENDMENT

Dear NRA Member:

February 25, 1988

**Urgent!** The battle to protect your firearms rights is on in Juneau. As a sportsman in State House District 4B, your help is needed today to secure passage of S.J.R. 15, the right to keep and bear arms and firearms preemption amendment to your state constitution.

Make no mistake, passage of S.J.R. 15 is absolutely necessary in Alaska to clarify that the Alaska Constitution guarantees the individual right to keep and bear arms and ensure that localities may not pass "Morton Grove-style" handgun bans nor any other restrictive gun rights legislation.

The future of this critical bill rests largely in the hands of your State Representative, Fran Ulmer, who is Chairperson of the House State Affairs Committee. Representative Ulmer is currently refusing to allow the Committee to vote on S.J.R. 15, despite the overwhelming support shown for this bill. Representative Ulmer is holding the bill simply because the Alaska Peace Officer's Association (APOA) sent written dissent to the February 17 Committee hearing — but did not even make the effort to attend the hearing.

The opposition of the APOA is based on the mistaken belief that S.J.R. 15 will create a situation where felons are no longer excluded from firearm ownership. Additionally, they mistakenly believe S.J.R. 15 will invalidate some of the laws currently in effect in Alaska such as those regulating concealed weapons and possession of firearms by intoxicated persons.

It has been pointed out to the APOA and to Representative Ulmer that there is an extensive amount of court precedence which clearly shows that S.J.R. 15 will not preclude reasonable regulations on firearms such as those previously mentioned. These are facts -- backed by court decisions -- that cannot be ignored.

There is absolutely no doubt that the important language reforms in S.J.R. 15 are needed in the State of Alaska. Although many of you may feel that your right to keep and bear arms is protected by both the U.S. and your state constitution, this simply is not so! Recent court rulings at the federal level have rejected the Second Amendment to the U.S. Constitution as it relates to the states. What the courts have stated is that the Second Amendment applies only to the federal government; therefore, unless a state has a similar provision in its constitution, the firearms rights of the citizens are in extreme jeopardy!

And unfortunately, in Alaska, your current state constitutional amendment does not protect your right to keep and bear arms for hunting, recreational shooting, self defense or any number of legitimate reasons. Indeed, a recent opinion by the Alaska Attorney General on the meaning of Article I, Section 19, of the Alaska Constitution states: "The modern judicial view has increasingly found that the guaranteed right to keep and bear arms is not an individually protected right, but rather a collective right which allows the people of the various states to serve in a militia."

b  
t  
r

MORAN © 1983 The Miami Herald

Suspect last seen exercising his lawful,  
Constitutional right to own a handgun...



5-0354N  
Bradley  
5/8/88

Original sponsors: Rodey, Szymanski,  
Uehling, et al.

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 HOUSE CS FOR CS FOR SENATE JOINT RESOLUTION NO. 15 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 Proposing an amendment to the Constitu-  
6 tion of the State of Alaska relating to  
7 the right of a person to keep and bear  
8 arms.

9 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 \* Section 1. Article I, sec. 19, Constitution of the State of Alaska,  
11 is amended to read:

12 SECTION 19. RIGHT TO KEEP AND BEAR ARMS. The [A WELL-REGULATED  
13 MILITIA BEING NECESSARY TO THE SECURITY OF A FREE STATE, THE] right of  
14 the people to keep and bear arms for lawful purposes shall not be  
15 infringed, except that the manner of keeping and bearing arms may be  
16 regulated by law.

17 \* Sec. 2. LEGISLATIVE INTENT. (a) In proposing the amendment to  
18 art. I, sec. 19, Constitution of the State of Alaska, in sec. 1 of this  
19 resolution, the legislature intends only that the proposed amendment clari-  
20 fy the Alaska Constitution by providing that the right to keep and bear  
21 arms is an individual right as well as a collective right. The amendment,  
22 if adopted, should not be construed to preclude the regulation of the  
23 manner in which arms may be borne, carried, or used. For example, the  
24 adoption of this amendment should not be interpreted to repeal or to render  
25 unconstitutional statutes or municipal ordinances regarding assault, mis-  
26 conduct involving weapons, or other similar offenses.

27 (b) In the preparation of its neutral summary under AS 15.58.020(6)-  
28 (C), the Legislative Affairs Agency shall consider the statement of legis-  
29 lative intent contained in (a) of this section.

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\* Sec. 3. The amendment proposed by this resolution shall be placed before the voters of the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and the election laws of the state.

ANALYSIS OF SJR 15

file w/  
jud. file  
MN

Claim: SJR 15 not needed; Second Amendment provides protection to gun owners.

Consider the opinion handed down in State v. Friel, 508 A.2d 123 (Me. 1986):

"The Second Amendment is inapplicable to this case; it operates as a restraint solely upon the power of the national government and does not restrict the power of the states to regulate firearms."

Other cases culminating with the same decision:

Miller v. Texas, 153 U.S. 535 (1894)  
Presser v. Illinois, 116 U.S. 252 (1886)  
Quilici v. Village of Morton Grove, 695 F.2d 261 (1983)  
U.S. v. Kozerski, 740 F.2d 952 (1st Cir. 1984)  
State v. Sanne, 116 N.H. 583 (1976)  
State v. Skinner, 189 Neb.57 (1973)

Additionally, in State v. Skinner, the Nebraska Supreme Court ruled that the Second Amendment to the U.S. Constitution guarantees the right to keep and bear arms to an organized militia, not individuals.

This aspect of the Skinner decision is quite similar to the April 13, 1983, opinion of Alaska Attorney General Norman C. Gorsuch on the meaning of Article I, Section 19, of the Alaska Constitution, stating: "The modern judicial view has increasingly found that the guaranteed right to keep and bear arms is not an individually protected right, but rather a collective right which allows the people of the various states to serve in a militia."

Claim: Individual language in SJR 15 will allow felons to own/possess firearms.

Courts in states with "individual" constitutional guarantees have consistently rejected challenges to state statutes restricting or denying the possession of firearms by convicted felons:

(State: Citation; Constitutional Language; Proscription By Felons.)

North Dakota: State v. Ricehill, 415 N.W.2d 481 (1987); "All individuals...."; ownership or possession of firearms.

Maine: State v. Friel, 508 A.2d 123 (1986); "Every citizen...."; possession of firearm.

Kentucky: Eary v. Commonwealth, 659 S.W.2d 198 (1983); "All men...."; possession of handgun.

Alabama: Bristow v. State, 418 So.2d 927 (1982); "Every citizen...."; possession of pistol.

Wyoming: Carfield v. State, 649 P.2d 865 (1982); "The right of citizens...."; possession of any firearm.

- Texas: Shepperd v. State, 586 S.W.2d 500 (1979); "Every citizen...."; possession of firearm away from residence.
- Louisiana: State v. Amos, 343 So.2d 166 (1977); "Each citizen...."; possession of firearms.
- Colorado: People v. Blue, 544 P.2d 385 (1975); "The right of no person to keep and bear arms...."; possession of firearms.
- Washington: State v. Tully, 89 P.2d 517 (1939); "The individual citizen...."; possession of pistol.

In addition to the cases cited above, courts in Georgia, Oregon, and Arizona have also rejected challenges based on state constitutional keep-and-bear-arms provisions to statutes making illegal a felon's possessing a firearm.

Claim: SJR 15 will invalidate reasonable laws currently on the books

Specifically mentioned have been laws regulating the carrying of concealed weapons and proscribing possession of firearms by intoxicated persons. As above, numerous citations can be offered indicating that courts regularly and routinely rule that the right to bear arms is subject to reasonable regulation:

(State: Citation; Decision.)

- Wyoming: State v. McAdams, 71 P.2d 1236 (1986); concealed carrying of arms subject to regulation.
- Oregon: State v. Delgado, 692 P.2d 610 (1984); legislature may regulate possession and use of arms.
- Indiana: Schubert v. DeBard, 398 N.E.2d 1339 (1980); license may be required to carry a pistol concealed.
- Oregon: State v. Kessler, 614 P.2d 94 (1980); concealed weapon carrying regulations permissible.
- Colorado: People v. Garcia, 595 P.2d 228 (1979); carrying a gun while drunk is outside the protected boundaries of the right to bear arms.
- North Carolina: State v. Dawson, 159 S.L.2d 1 (1968); open carrying for unlawful purposes may be prohibited.
- Kentucky: Holland v. Commonwealth, 294 S.W.2d 83 (1956); limits carrying of concealed weapons.
- Idaho: State v. Hart, 157 P.2d 72 (1945); upholds statutes prohibiting the carrying of concealed weapons.

# Anchorage Police Department Employees Assoc.

P.O. Box 1539  
786-8787

Anchorage, Alaska 99510

May 3, 1988

Honorable John Sund  
Chairman, House Judiciary Committee  
Room 120  
Capitol Bldg.  
Juneau, AK. 99811

Dear Representative Sund and Judiciary Committee Members,

We are writing to re-state our strongest opposition to Senate Joint Resolution 15 that is now before you. We fail to see the need for such amending of the State Constitution.

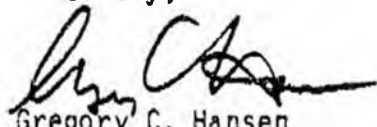
We feel the existing language in the current constitution allows for controls on dangerous and illegal weapons and provides the necessary controls on use of firearms by those who are ineligible.

We find the existing laws to be reasonable and necessary. By considering and changing the constitution wording, the legislative intent can be loosely and broadly interpreted to allow further breaching of public safety.

The recent and tragic death of an Anchorage woman indicates a need for some restrictions in firearms rights in comparison to opening up the system to make it looser. The firearm used in her death was purchased the day of the offense, only 90 minutes before the attack.

We expect that changing the constitution to reflect the issue of individual right versus the collective right will open up Pandora's box. We feel the present law is not broken so it does not need repair.

Sincerely,



Gregory C. Hansen  
Chairman  
Legislative Affairs Committee

Municipality  
of  
Anchorage



SJR 15  
POUCH 6-650  
ANCHORAGE, ALASKA 99502-0850  
(907) 264-4545

TONY KNOWLES  
MAYOR

OFFICE OF THE MUNICIPAL ATTORNEY

May 6, 1986

Members of the House Judiciary Committee

Re: SJR 39

The Municipality does not oppose a constitutional amendment that redefines the "right to bear arms" as a personal right vested in each citizen of the state. We are very concerned however with the way in which the measure is now drafted. Our concerns are based on the fact that the present language, quite arguably, would not permit the state or a municipality to regulate either the type of arms possessed or the manner and circumstances of possession.

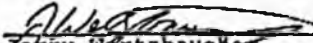
While the version passed by the Senate clearly allows regulation of the use of arms, many existing laws do not relate to the simple use of a weapon, but rather to its function and to the manner and circumstances in which it is possessed. Public safety concerns demand that the state legislature and local assemblies be permitted to ban certain types of arms such as bombs, hand grenades, machine guns, silencers, sawed-off shotguns and bullets designed to pierce protective devices worn by law enforcement officials. We believe likewise that the constitution should permit the Legislature to bar the possession of arms by certain classes of convicted criminals, intoxicated or mentally disturbed persons. Finally we feel it is essential to control the circumstances in which otherwise lawful weapons are possessed by limiting the carrying of concealed weapons, the possession of loaded firearms on licensed premises, the possession of a firearm by a minor without parental consent, et cetera. We reiterate the position taken by Attorney General Harold Brown in his March 26, 1986 letter regarding SJR 39:

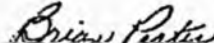
These statutes [that would be invalidated by SJR 39] serve an important public safety function by carefully regulating the possession of especially dangerous weapons or weapons

carried in an especially dangerous manner or place. If the legislature does not intend to render these statutes unenforceable, nor to foreclose a future legislature from adopting similar provisions (prohibiting possession of loaded firearms in a church or on school grounds for example), then the legislatures intent to continue to allow a reasonable regulation by law should be made clear.

The clarity of intent referred to by the Attorney General must be embodied in the measure itself. Otherwise both State and Municipal prosecutors will face a flurry of legal challenges by those charged with weapons-related offenses.

In conclusion, we urge that if the committee does not intend to invalidate existing statutes and ordinances regulating the type of arms that may be possessed, and the circumstances of possession, then it must embody this intent clearly within the amendment that is offered to the voters for ratification.

  
Jerry Wertzbaugher  
Municipal Attorney

  
Brian Porter, Chief  
Anchorage Police Department

Municipality  
of  
Anchorage



POUCH 6-650  
ANCHORAGE, ALASKA 99502-0650  
(907) 264-4545

TONY KNOWLES,  
MAYOR

OFFICE OF THE MUNICIPAL ATTORNEY

February 25, 1986

TO: Members of the Senate Judiciary Committee

Re: Senate Joint Resolution No. 39

The proposed amendment to Article I, Section 19 of the State Constitution set forth in Senate Joint Resolution No. 39 could, in its original form, preclude the regulation of conduct which has traditionally been considered to be criminal. Of particular concern is the clause beginning on line 15 which specifies "...personal defense and for the defense of family, property...". This provision could be read to invalidate all existing state and municipal laws governing the use of firearms for self-defense and the defense of property. Historically, the right to use firearms to protect self, family, and property has been curtailed. The amendment in its present form would cast doubt on the viability of continued regulation of such items.

The amendment, in its present form, would also have the likely affect of nullifying state and municipalities laws regulating the possession of firearms. This is because of the deletion of provisions referencing a "well regulated militia." Historically, the courts have interpreted that phrase as creating not a personal right to bear arms, but rather a right of the state to maintain a militia. The deletion of that phrase would cast doubt on the validity of all previous court decisions pertaining to the interpretation of section 19, and a similar provision of the Federal Constitution. With the deletion of that body of law, the phrase "shall not be infringed" would take on a whole new meaning. Thus, the state and local governments could lose the ability to regulate such activities as the carrying of concealed weapons and the obliteration of serial numbers on firearms.

The provision could easily be amended so as to affirm the right of the individual to own and possess firearms (as opposed to the right of the state to maintain a militia) without precluding the Legislature's ability to prescribe certain conduct with respect

to the use and possession of deadly weapons. First, I would propose a change to line 15 whereby the term "personal" would be replaced by "lawful" and the phrase "and for the defense" be replaced by the phrase "of self". In addition, line 17 should be changed by adding language after the term "city" which would read "...except that the manner in which arms are possessed may be subject to reasonable regulations designed to protect the public safety".

In addition, if the Committee's intent is merely to establish a personal right to the ownership and possession of firearms and not to overturn existing laws governing the use of firearms, then such intent should be plainly set forth in a permanent report that will serve in the future to guide the courts. Furthermore, if the additional language I have suggested is added to the amendment, the Committee report should clarify the Committee's intent by specifying that the ability of state and local government to impose reasonable regulations on the possession of firearms would include laws curtailing the possession of concealed weapons or weapons that have altered identification marks, but would not include the right of the state or local government to enact an outright ban on the ownership or possession of arms.

Very truly yours,

DEPARTMENT OF LAW

Jerry Wertzbaugher  
Municipal Attorney

JW:gm1

# STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

Bill Sheffield, Governor

ROUCHER - STATE CAPITOL  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3900

March 26, 1986

RECEIVED

MAR 26 1986

Dept. of Law  
Administration

The Honorable Vic Fischer  
Alaska State Legislature  
P.O. Box V  
Juneau, Alaska 99811

Re: S.J.R. 39

Dear Senator Fischer:

You have asked for the Department of Law's comments upon the current language of S.J.R. 39, a resolution proposing an amendment to Article I, sec. 19 of the state constitution, relating to a citizen's right to keep and bear arms. As I understand it, S.J.R. 39, as amended on the Senate floor yesterday, provides that art. I, sec. 19 of the Alaska Constitution will be amended to read:

SECTION 19. RIGHT TO KEEP AND BEAR ARMS. The [A WELL-REGULATED MILITIA BEING NECESSARY TO THE SECURITY OF A FREE STATE, THE] right of each citizen of the state [THE PEOPLE] to keep and bear arms for lawful defense of self, family, property, and the state and for lawful hunting, recreation, and other lawful purposes, shall not be infringed by a state or by a borough or city of the state.

We are concerned that the language presently contained in S.J.R. 39 might allow later constitutional challenge to some existing state statutes. Present law, for example, prohibits a convicted felon from possessing a concealable firearm, prohibits possession of certain weapons such as bombs, hand grenades, silencers, and sawed-off shot guns, prohibits possession of a firearm while intoxicated, or the discharge of a firearm from, on, or across a highway, the carrying of a concealed weapon, possession of a loaded firearm on licensed premises, or possession of a firearm by a minor without parental consent. (Sec AS 11.61.200-.220.)

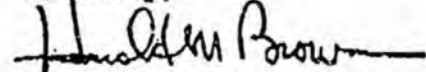
These statutes serve an important public safety function by carefully regulating the possession of especially dangerous weapons or weapons carried in an especially dangerous manner or place. If the legislature does not intend to render

these statutes unenforceable, nor to foreclose a future legislature from adopting similar provisions (prohibiting possession of loaded firearms in a church or on school grounds, for example), then the legislature's intent to continue to allow reasonable regulation by law should be made clear. The possibility that the language proposed in S.J.R. 39 could be interpreted as invalidating some portions of Alaska's present criminal code is a real one. See, for example, State v. Kessler, 614 P.2d 94 (Ore. 1980), and State v. Delgado, 692 P.2d 610 (Ore. 1984).

We believe that any possible ambiguity could be eliminated by the addition, at the end of the current language, of the phrase "except that the manner of keeping and bearing arms may be regulated by law." This suggested language is based upon similar provisions in the constitutions of several other states, including Florida (art. I, sec. 8), Georgia (art. I, sec. 1), and Utah (art. I, sec. 6). The addition of this clause would make it clear that, although a citizen's basic right to keep and bear arms may not be infringed, reasonable and appropriate regulation of the manner in which arms are kept or borne (i.e., possession by felons, by minors, in a bar, while intoxicated, etc.) is not an infringement on an individual's constitutional right. Mr. Rupe Andrews, Alaska Field Representative for the National Rifle Association, has indicated that his organization would not object to the inclusion of this additional language in S.J.R. 39. I also suggest that you consider retaining the language in the present constitutional provision "the people," rather than change it to "each citizen of the state." State constitutional provisions have traditionally recognized the equal rights of all residents of the state, regardless of the resident's national origin.

A carefully drafted amendment would minimize the possibility that, should the proposed constitutional amendment be adopted, a criminal defendant would later be able to argue that a criminal weapons misconduct statute is unconstitutional because it violates his right to keep and bear arms under art. I, sec. 19 of the state constitution.

Sincerely,



Harold M. Brown  
Attorney General

HMB:GAR:gb-13,

# CITY OF SEWARD

P.O. BOX 167  
SEWARD, ALASKA 99664



- Main Office (907) 224-3331
- Police (907) 224-3338
- Harbor (907) 224-3138
- Fire (907) 224-3445
- Telecopier (907) 224-3248

APR 21 1988

April 14, 1988

The Honorable John Sund, Chairman, Judiciary Committee  
House of Representatives  
P.O. Box V, Mail Stop 3100  
Juneau, Alaska 99811

Dear Sir:

I am writing to express my opinion on Senate Joint Resolution No. 15.

I feel that the bill is unnecessary, because the rights of the individual are already addressed in the constitution.


But more importantly, it would appear that this bill is an effort to extend those rights by muddying the water. I am sure that the intent is not to allow those individuals who would use weapons criminally more freedom. However, there is the distinct possibility that this would be a spin off effect of the passage of this resolution.

Surely it is apparent that legislative direction, which many times affects public attitudes, must remain in an area of restraint when it comes to the use of weapons that may easily be turned against the public. Our personal freedoms currently are not being infringed. Telling the public that their rights extend past the current level will only cause trouble for all of us.

How many of the public will read this to mean that Saturday night specials, automatic weapons, and others are okay to own and use? I doubt that many of the citizens of this State will. However, those who do see fit to break the laws and endanger the lives of others will use this to their advantage.

I ask that you take these matters into consideration as you deliberate on the passage of this resolution.

Sincerely,

  
Louis A. Bencardino  
Chief of Police  
Seward Police Department

LAB/dra



NATIONAL RIFLE ASSOCIATION OF AMERICA  
 INSTITUTE FOR LEGISLATIVE ACTION  
 555 CAPITOL MALL, SUITE 455  
 SACRAMENTO, CA 95814  
 (916) 448-2455

*[Handwritten initials]*

April 6, 1988

Representative John Sund  
 State Capitol, Room 122  
 Pouch V  
 Juneau, AK 99811

*I did not agree*

APR 8 1988

Dear Representative Sund:

Thank you again for taking the time to meet with us last week regarding SJR 15, the Constitutional Amendment for the right to keep and bear arms.

You agreed that our language would not change the current statutes regarding ownership and possession of firearms by felons but you did express concern regarding other reasonable regulations which might be invalidated (i.e., concealed carrying, possession by intoxicated persons).

I have included, for convenient reference, a copy of the analysis given to you last week along with the constitutional language from each state from which a court case is cited. You will note that regardless of the specific language contained in the individual state's constitution, courts regularly and routinely rule that the right to bear arms is subject to reasonable regulation.

Representative Gruenberg offered alternative language to that which passed out of the State Affairs Committee. His proposed language is shorter and more concise than the current version of SJR 15, attributes which the National Rifle Association certainly agrees are desirable in constitutional language. Representative Gruenberg's proposal, which the NRA supports and has given to the Alaska Peace Officers Association for comment, reads as follows:

"The right of the people to keep and bear arms for lawful purposes shall not be infringed by the state or any political subdivision thereof."

Your support for this alternate language would be greatly appreciated by the National Rifle Association and all law-abiding gun owners in Alaska. As we discussed, a hearing date some time during the week of April 18 would be desirable. Please have your staff contact me when a date has been selected.

Sincerely,

*Brian Judy*  
 Brian Judy  
 State Liaison

*B. Smith*  
 Research - find the different versions of the bill that was reviewed in 1986 legislation

BJ:bsw

Enclosure

# ALASKA PEACE OFFICERS ASSOCIATION

State APOA Office • P.O. Box 240106 • Anchorage, AK 99524-0106 • (907)786-1807



## EXECUTIVE DIRECTOR

M. James Messick

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February 15, 1988

The Honorable Fran Ulmer  
Chair, State Affairs Committee  
Alaska State Legislature  
P. O. Box V  
Juneau, AK 99811

Dear Fran:

I am writing concerning Senate Joint Resolution 15 which proposes an amendment to the Constitution of the State of Alaska. The resolution has been referred to the House State Affairs Committee.

On January 14, 1988, the Alaska Peace Officers Association Board of Directors formally received the proposed resolution. At the conclusion of the review a motion was unanimously passed opposing Senate Joint Resolution 15.

Our concern with this amendment change is that the door could be conceivably left open to eliminate other laws currently on the books. Laws such as felon in possession of a handgun, possession of weapons by intoxicated persons, carrying concealed weapons, etc. We feel these are fair and justifiable laws that are obviously needed.

As you are probably aware, a majority of our members are gun enthusiasts. We are engaged in many activities such as hunting, target shooting, trap shooting and almost any sporting activity relating to guns and weapons. We do not feel our current constitution prohibits or dampens any legitimate activity in relation to these activities.

Therefore, if the machine is not broken, why fix it. We do not feel the current constitution infringes upon any person or group, the right to bear arms. It does, however, allow the state to control the possession of weapons by certain people such as felons and people under the influence. It also allows the state to control certain classes of weapons, such as bombs, silencers, sawed-off shotguns, switchblade knives and the like.

The Honorable Fran Ulmer  
February 15, 1988  
Page 2

If you have any further questions, please contact me.

Sincerely,

*Ed Kalwara*

Ed Kalwara  
State President  
Alaska Peace Officers Association  
2760 Sherwood Lane  
Juneau, AK 99801  
789-2165 (work)  
789-0036 (home)

cc: Governors Criminal Justice Working Group  
John Sund, Chair, House Judiciary Committee ✓  
All Members of the House State Affairs Committee



# Oklahoma City University Law Review

## ARTICLE

- \* STATE CONSTITUTIONS AND THE RIGHT  
TO KEEP AND BEAR ARMS

*Robert Dowlut  
Janet A. Knoop*

## NOTES

"ONE STEP BEYOND": THE COMMERCE  
CLAUSE AND FEDERALISM AFTER  
*FERC v. Mississippi*

PUBLIC UTILITY SECURITIES REGULATION:  
A NEW LIFE FOR AN OLD LAW

DOES A TITLE INSURER QUA TITLE INSURER  
OWE A DUTY TO ANY BUT ITS INSURED?

## COMMENT

INAPPLICABILITY OF CONTRACT  
PRINCIPLES TO RESOLVE STATE FACULTY POLICY  
DISPUTES: *Randolph v. Board of Regents of  
Oklahoma Colleges*

## ESSAY

THE BABY AND THE BATHWATER: *Steven Alan Childress*  
SALVAGING A POSITIVE SOCRATIC METHOD

# OKLAHOMA CITY UNIVERSITY LAW REVIEW

VOLUME 7

SUMMER 1982

NUMBER 2

## ARTICLE

### STATE CONSTITUTIONS AND THE RIGHT TO KEEP AND BEAR ARMS

Robert Dowlut\*

Janet A. Knoop\*\*

#### I. INTRODUCTION

Guarantees of individual liberties under federalism have two components: the federal Constitution and state constitutions. The constitutions of thirty-nine (39) states guarantee a right to arms.<sup>1</sup> By comparison to the second amendment of the United States Constitution the textual content of most

---

\* Robert Dowlut: B.S., Indiana University, 1975; J.D., Howard University, 1979; Member D.C. Bar.

\*\* Janet A. Knoop: B.A., College of New Rochelle, 1978; Cum Laude Graduate, J.D., Pace University, 1981; Member D.C. and N.Y. Bar.

1. See the Appendix. California, Delaware, Iowa, Maryland, Minnesota, Nebraska, New Jersey, New York, North Dakota, West Virginia, and Wisconsin do not have a specific guarantee to arms in their constitutions. However, six of those states guarantee to all persons the natural or inalienable right to self-defense. CAL. CONST. art. I, §1; DEL. CONST. preamble; IOWA CONST. art. I, §1; N.J. CONST. art. I, §1; N.D. CONST. art. I, §1; W. VA. CONST. art. III, §1. Two other states consider the right to life an inherent right. NEB. CONST. art. I, §1; WIS. CONST. art. I, §1. The natural right to defend one's life is usually not effectively exercised with bare hands. This right can only be given force and effect if its guarantee includes a right to own arms commonly possessed for defensive purposes. In *Commonwealth v. Ray*, 218 Pa. Super. 72, —, 272 A.2d 275, 278-79 (1970), *vacated on other grounds*, 448 Pa. 307, 292 A.2d 410 (1972), the court held that, under the Pennsylvania Constitution, the right to self-defense and the right to bear arms each serves as an independent guarantee for a right to bear arms. However, the court acknowledged that such right is not unlimited.

state constitutions effects broader rights. Presently only five states track the language of the second amendment.<sup>2</sup> Since the Supreme Court has not specifically held that the second amendment applies to the states,<sup>3</sup> state guarantees on arms serve as an important bulwark against infringement,<sup>4</sup> for "it is the state courts at all levels, not the federal courts, that finally determine the overwhelming number of the vital issues of life, liberty and property that trouble countless human beings of

2. ALASKA CONST. art. I, §19; HAWAII CONST. art. I, §15; N.C. CONST. art. I, §30; S.C. CONST. art. I, §20; and VA. CONST. art. I, §13.

3. See *Miller v. Texas*, 153 U.S. 535 (1894) (The second and fourth amendments only protect against infringement by national government); and *Presser v. Illinois*, 116 U.S. 252 (1886) (The second amendment restricts only the national government). *But see* *State v. Anonymous*, 179 Conn. 516, 519, 427 A.2d 403, 405 (1980); *Watson v. Stone*, 4 So. 2d 700, 703 (Fla. 1941) (en banc) (Buford, J., concurring); *Nunn v. State*, 1 Ga. (1 Kelly) 243 (1846); *In re Brickley*, 8 Idaho 597, 70 P. 609 (1902); *People v. Liss*, 406 Ill. 419, 94 N.E.2d 320, 323 (1950); *State v. Chandler*, 5 La. Ann. 489, 490 (1850); *McKeller v. Mason*, 159 So. 2d 700, 702 (La. Ct. App. 1964), *aff'd*, 245 La. 1075, 162 So. 2d 571 (1964); *State v. Nickerson*, 126 Mont. 157, 247 P.2d 188, 192 (1952). The second amendment has generated considerable commentary: Hays, *The Right to Bear Arms, A Study in Judicial Misinterpretation*, 2 WM. & MARY L. REV. 381 (1960); Sprecher, *The Lost Amendment*, (pts. 1 & 2) 51 A. B. A. J. 554 (1965), 51 A. B. A. J. 665 (1965); Olds, *The Second Amendment and the Right to Keep and Bear Arms*, 46 MICH. ST. B.J., Oct. 1967, at 15, Comment, *The Right to Keep and Bear Arms: A Necessary Constitutional Guarantee or an Outmoded Provision of the Bill of Rights?*, 31 ALB. L. REV. 74 (1967); Levine & Saxe, *The Second Amendment: The Right to Bear Arms*, 7 HOUS. L. REV. 1 (1969); McClure, *Firearms and Federalism*, 7 IDAHO L. REV. 197 (1970); Hardy & Stompoly, *Of Arms and the Law*, 51 CHI. [-]KENT L. REV. 62 (1974); Weiss, *A Reply to Advocates of Gun-Control Law*, 52 J. URB. LAW 557 (1974); Whisker, *Historical Development and Subsequent Erosion of the Right to Keep and Bear Arms*, 78 W. VA. L. REV. 171 (1976); Caplan, *Restoring the Balance: The Second Amendment Revisited*, 5 FORDHAM URB. L.J. 31 (1976); Caplan, *Handgun Control: Constitutional or Unconstitutional?* 10 N.C. CENT. L.J. 53 (1978); Cantrell, *The Right to Bear Arms: A Reply*, 53 WIS. B. BULL. Oct. 1980, at 21; Halbrook, *The Jurisprudence of the Second and Fourteenth Amendments*, 4 GEO. MASON L. REV. 1 (1981); Halbrook, *To Keep and Bear Their Private Arms: The Adoption of the Second Amendment, 1787-1791*, 10 N. KY. L. REV. 13 (1982); Gardiner, *To Preserve Liberty: A Look at the Right to Keep and Bear Arms*, 10 N. KY. L. REV. 63 (1982); Caplan, *The Right of the Individual to Bear Arms: A Recent Judicial Trend*, 1982 DET. C. L. REV. 789; Shalhope, *The Ideological Origins of the Second Amendment*, 69 J. AM. HIST. 599 (1982); Dowlut, *The Right To Arms: Does The Constitution or the Predilection of Judges Reign?* 36 OKLA. L. REV. 65 (1983), Malcolm, *The Right of the People to Keep and Bear Arms: The Common Law Tradition* (1983) (to be published in 10 HASTINGS CONST. L.Q.).

4. Since the second amendment protects against federal infringement, "the absence of such a guarantee in the state Constitution leaves the Legislature entirely free to deal with the subject." *Ex Parte Rameriz*, 193 Cal. 633, —, 226 P. 914, 922 (1924).

this Nation every year."<sup>5</sup>

Recently state constitutions have generated considerable commentary.<sup>6</sup> While it is well known that gun control is a vehemently debated political issue, and that voters have rejected efforts to ban handguns in Massachusetts<sup>7</sup> or to register and freeze their number at the current level in California,<sup>8</sup> recent commentary on state constitutions has not produced an analysis of state constitutional guarantees on arms. This article seeks to satisfy this need.

In our constitutional system, governments derive their powers from the people. As John Marshall stated: "The state governments did not derive their powers from the general government; but each government derived its powers from the people, and each was to act according to the powers given it."<sup>9</sup> A state constitution is adopted by the people in order to harmonize the need to guarantee individual rights with the need for effective state government with plenary authority.<sup>10</sup> Thus the purpose of a state constitutional guarantee "is to place the life, liberty and property of the citizen beyond the control of legislation, and to prevent either legislators or courts from any interference with, or deprivation of, the rights therein declared and guaranteed . . . ."<sup>11</sup> To fulfill this purpose, "a constitutional guaranty should be interpreted in a broad and lib-

5. Brennan, *Introduction: Chief Justice Hughes and Justice Mountain*, 10 *SE-  
TON HALL* xii (1979).

6. See, e.g., Note, *Developments in the Law—The Interpretation of State Constitutional Rights*, 95 *HARV. L. REV.* 1324 (1982); Collins, *Reliance on State Constitutions—Away From a Reactionary Approach*, 9 *HASTINGS CONST. L.Q.* 1 (1981); Kelman, *Forward: Rediscovering the State Constitutional Bill of Rights*, 27 *WAYNE L. REV.* 413 (1981); Note, *Private Abridgment of Speech and State Constitutions*, 90 *YALE L.J.* 165 (1980); Brennan, *State Constitutions and the Protection of Individual Rights*, 90 *HARV. L. REV.* 489 (1977).

7. *N.Y. Times*, Nov. 4, 1976, at 23, col. 3.

8. *Wash. Post*, Nov. 9, 1982, . . . A6, col. 1.

9. 3 *J. ELLIOT'S Debates on the Federal Constitution* 419 (1836).

10. One court stated: "The constitution is not a grant of power but a limitation on the exercise thereof. While generally the legislature may exercise all those powers inherent in the people which are not delegated to another branch of gov't it cannot enact laws which will supersede constitutional provisions adopted by the people." *Kirkpatrick v. Superior Court*, 105 *Ariz.* 413, \_\_\_, 466 P.2d 18, 20-21 (1970). *Cf. Lemons v. Noller*, 144 *Kan.* 813, \_\_\_, 63 P.2d 177, 180 (1936) (constitution limits rather than confers power on legislature).

11. *People ex rel. Decatur & S.L. Ry. Co. v. McRoberts*, 62 *Ill.* 38, 41 (1871).

eral spirit."<sup>12</sup>

This article uses the interpretivist approach<sup>13</sup> to determine the meaning of a constitutional guarantee. Under interpretivism, judges deciding constitutional issues should confine themselves to enforcing norms that are stated clearly or implicitly in the written constitution.

This article will examine (1) the historical reasons for a right to arms in this nation; (2) the police power as a limit on the right to bear arms; (3) the view of individual right to bear arms versus that right of the people to collectively bear arms; (4) the meaning of the term "arms," and (5) the textual differences of the state constitutions affording citizens the right to bear arms. The article will conclude with a suggested interpretation based on the textual differences.

## II. HISTORICAL REASONS FOR A RIGHT TO ARMS

The historical reasons for a right to arms are (A) the preference for a militia over a standing army, (B) the deterrence of governmental oppression, and (C) the right of personal defense.<sup>14</sup>

A. The link between the creation of standing armies and the rise of absolutist governments has ancient roots in English history. The citizen militia is associated with liberty. Blackstone notes "that king Alfred first settled a national militia in this kingdom, and by his prudent discipline made all the subjects of his dominion soldiers. . . ."<sup>15</sup> In a land of liberty to

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12. *Wolfson v. Avery*, 6 Ill. 2d 78, 94, 126 N.E.2d 701, 710 (1955). A constitutional right should not be impaired by any narrow or technical construction of the language used. *People v. Spain*, 307 Ill. 283, 289-90, 138 N.E. 614, 617 (1923). All provisions of the Constitution designed to safeguard the liberty and security of the citizen should be liberally construed. See, *Randle v. Winona Coal Co.*, 206 Ala. 254, —, 89 So. 790, 792 (1921); *Salter v. State*, 2 Okla. Cr. 464, —, 102 P. 719, 725 (1909).

13. See generally J. ELY, *DEMOCRACY AND DISTRUST* 1 (1980). Noninterpretivism is the approach in which courts go beyond that set of references in the written constitution and enforce norms that cannot be discovered within the four corners of the document.

14. *State v. Kessler*, 289 Or. 359, —, 614 P.2d 94, 97 (1980). The people are guaranteed the right "to possess arms for their own personal defense, for the defense of their states and nation, and for the purpose of keeping their rulers sensitive to the rights of the people." Shalhope, *The Ideological Origins of the Second Amendment*, 69 J. AM. HIST. 599 (1982).

15. 1 W. BLACKSTONE, *COMMENTARIES ON THE LAWS OF ENGLAND* \*409-10.

make the military a distinct order and to maintain a standing army are dangers to liberty. "In absolute monarchies this is necessary for the safety of the prince, and arises from the main principle of their constitution, which is that of governing by fear. . . ."16

Until the English Civil War (1642) the right to bear arms was taken for granted; until the Restoration (1660) it had never been challenged. Charles II, however, disarmed his enemies by enacting a game act designed to rob the vast majority of Englishmen of their right to own arms,<sup>17</sup> establishing a standing army, and ordering persons with suspect loyalties to be disarmed and, in some cases, to be imprisoned. After the flight of James II, William and Mary were invited to ascend to the throne after assenting to a Declaration of Rights, enacted in 1689, containing a list of "undoubted rights and privileges," including "that the Subjects which are Protestants may have Arms for their Defence suitable to their Conditions and as allowed by Law."<sup>18</sup>

The Declaration of Independence criticizes the king and Parliament for keeping "in times of peace, Standing Armies without the Consent of our Legislature," rendering "the Military independent of and superior to the Civil Power," and "transporting large armies of foreign mercenaries to compleat

16. *Id.* at \*408.

17. "For prevention of popular insurrections and resistance to the government, by disarming the bulk of the people" game laws were enacted. 2 W. BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND \*412.

18. A discussion of this period of English history is found in *Aymette v. State*, 21 Tenn. (2 Hum.) 154, 156-58 (1840). The *Aymette* court erred in stating that "private defence" was not protected by the English Declaration of Rights. The Recorder of London in 1780 wrote: "The right of his majesty's Protestant subjects, to have arms for their own defence, and to use them for lawful purposes, is most clear and undeniable. . . . The lawful purposes, for which arms may be used, (besides immediate self-defence) are, the suppression of violent and felonious breaches of the peace, the assistance of the civil magistrate in the execution of the laws, and the defence of the kingdom against foreign invaders." W. BLIZARD, *DESULTORY REFLECTIONS ON POLICE: WITH AN ESSAY ON THE MEANS OF PREVENTING CRIMES & AMENDING CRIMINALS* 59, 63 (London 1785). A detailed discussion of the right to arms and the English Civil War, the Interregnum, and the Restoration is found in MALCOLM, *DISARMED: THE LOSS OF THE RIGHT TO BEAR ARMS IN RESTORATION ENGLAND* (Bunting Institute of Radcliffe College 1980) (Reprinted by National Rifle Ass'n., Wash., D.C.); See also Malcolm, *The Right of the People to Keep and Bear Arms: The Common Law Tradition*, (1983) (to be published in 10 HASTINGS CONST. L.Q.).

the works of death, desolation and tyranny. . . ."<sup>19</sup>

B. The foundation of an Englishman's security, "the security without which every other would have been insufficient," was neither Magna Charta nor Parliament but "the power of the sword."<sup>20</sup>

James Madison believed that "the advantage of being armed" was a condition "the Americans possess over the people of almost every nation." The despotisms of Europe were charged with being "afraid to trust the people with arms."<sup>21</sup> An armed citizenry serves as a deterrent to governmental oppression because the people have the latent and implicit power to "rise up to defend their just rights, and compel their rulers to respect the laws."<sup>22</sup> Totalitarian governments of the left and right in the twentieth century consider an armed people a threat and seek to disarm them.<sup>23</sup>

19. The Declaration of Independence para. 1 (U.S. 1776).

20. 1 T. MACAULAY, CRITICAL AND HISTORICAL ESSAYS, CONTRIBUTED TO THE EDINBURGH REVIEW 163 (London 1885).

21. THE FEDERALIST No. 46, at 299 (J. Madison)(C. Rossiter ed. 1961). Noah Webster thought that "[b]efore a standing army can rule, the people must be disarmed; as they are in almost every kingdom in Europe. The supreme power in America cannot enforce unjust laws by the sword; because the whole body of the people are armed, and constitute a force superior to any band of regular troops that can be, on any pretence raised in the United States. A military force, at the command of Congress, can execute no laws, but such as the people perceive to be just and constitutional; for they will possess the power, and jealousy will instantly inspire the inclination to resist the execution of a law which appears to them unjust and oppressive." PAMPHLETS ON THE CONSTITUTION OF THE UNITED STATES at 51, 56 (P. Ford ed. 1888) (emphasis in original). In our system of checks and balances, the people are also a factor. Freedoms of speech, press, petition, and the private keeping and bearing of arms have a common purpose, namely a safeguard against abuse of powers by government.

Richard Henry Lee thought that "to preserve liberty, it is essential that the whole body of the people always possess arms, and be taught alike, especially when young, how to use them. . . ." LETTERS FROM THE FEDERAL FARMER TO THE REPUBLICAN 124 (W. Bennett ed. 1978).

22. *Aymette v. State*, 21 Tenn. (2 Hum.) 154, 157 (1840).

23. "The surrender of guns and other implements of war has been ordered by special proclamation." R. LEMKIN, AXIS RULE IN OCCUPIED EUROPE 591 (1944).

"Anybody posting a placard the Germans didn't like would be liable to immediate execution, and a similar penalty was provided for those who failed to turn in firearms or radio sets within twenty-four hours." W. SHIRER, THE RISE AND FALL OF THE THIRD REICH 1027 (1959).

The Nazis seized Albert Einstein's bank account for a weapons violation: the possession of a common knife in his home. 1 J. TOLAND, ADOLPH HITLER 325 (1976). "The repression continued with issuance of a series of harsh edicts . . . such as the one to

C. Self-defense is a natural right recognized at common law. Sir Michael Foster, judge of the Court of King's Bench and Recorder of Bristol, wrote the following:

The right of self-defence in these cases is founded in the law of nature, and is not, nor can be, superseded by any law of society. For before societies were formed, (one may conceive of such a state of things though it is difficult to fix the period when civil societies were formed,) I say before societies were formed for mutual defence and preservation, the right of self-defence resided in individuals; it could not reside elsewhere, and since in cases of necessity, individuals incorporated into society cannot resort for protection to the law of the society, that law with great propriety and strict justice considereth them, as still, in that instance, under the protection of the law of nature.<sup>24</sup>

This English tradition is reflected in early state constitutions<sup>25</sup> and American commentaries.<sup>26</sup> American case law echoes these sentiments.<sup>27</sup> Furthermore, there is no social interest

surrender all arms immediately or be shot." Hitler, however, during the early stages of his climb to power, got a pistol permit from the sympathetic police. *Id.* at 86-87, 120.

"Owning a pistol meant an obligatory conviction for terrorism. . . ." 1 A. SOLZHENITZYN, *THE GULAG ARCHIPELAGO* 195 (1974). The right to have firearms or other weapons is forbidden and self-defense is also curtailed. 2 A. SOLZHENITZYN, *THE GULAG ARCHIPELAGO* 431-32.

George Orwell, author of *1984*, noted that the Russian revolution and the Irish civil war were political factors which prompted the passage of restrictive gun laws. B. Bruce-Briggs, *The Great American Gun War*, 45 *THE PUB. INTEREST* 37, 61 (1976). Today, draconian gun laws are an ugly form of repression often cloaked in "liberal" trappings.

24. M. FOSTER, *CROWN CASES* 273-74 (London 1776). Cases of justifiable self-defense include "[w]here a known felony is attempted upon the person, be it to rob or murder . . . , [a] woman in defence of her chastity . . . , [and] arson or burglary in the habitation." *Id.* at 274. Other English commentators also supported self-defense, including Blackstone. 3 W. BLACKSTONE, *COMMENTARIES* \*4.

25. "That the people have a right to bear arms for the defence of themselves and the State . . . ." PA. DECLARATION OF RIGHTS art. XIII (1776) and VT. CONST. ch. I, art. XV (1777). In America, "the requirements for self-defense and food-gathering had put firearms in the hands of nearly everyone." D. BOORSTIN, *THE AMERICANS—THE COLONIAL EXPERIENCE* 352-53 (1958).

26. "The right of self-defence in these cases is found in the law of nature, and is not, and cannot be superseded by the law of society." 2 J. KENT, *COMMENTARIES ON AMERICAN LAW* 12 (N.Y. 1827). "The right of self defence is the first law of nature." 1 *St. Geo. Tucker's BLACKSTONE COMMENTARIES* 300 app. (Phil. 1803).

27. See *Parrish v. Commonwealth*, 81 Va. 1, 12 (1884); see also *State v. Hardy*,

in preserving the lives and well-being of criminal aggressors at the cost of those of their victims. The only defensible policy society can adopt is one that will operate as a sanction against unlawful aggression.

The police have no duty to protect the individual citizen,<sup>28</sup> and the same applies to the state. One court stated that "there is no constitutional right to be protected by the state against being murdered by criminals or madmen."<sup>29</sup>

### III. THE POLICE POWER

Limitations on the right to keep and bear arms stem from a state's police power<sup>30</sup> and, in eighteen (18) states, from per-

60 Ohio App. 2d 325, 397 N.E.2d 773 (1978).

28. *Warren v. District of Columbia*, 444 A.2d 1 (D.C. App. 1981); *Weiner v. Metro Transp. Auth.*, 55 N.Y.2d 175, 448 N.Y.S.2d 141 (1982). *Contra Yingst v. Pratt*, 139 Ind. App. 695, —, 220 N.E.2d 276, 280 (1966)(en banc). "It is the right and duty of a private person to apprehend one who has committed a felony in his presence, either at the time of its commission or upon immediate pursuit" (quoting 5 AM. JUR. 2d, *Arrest* § 35). Other cases in accord include *Suell v. Derricott*, 161 Ala. 259, —, 49 So. 895, 900 (1909); *Pond v. People*, 8 Mich. 149, 178 (1860). In 1981, police in California justifiably killed sixty-eight persons; civilians justifiably killed 126 persons. *HOMICIDE IN CAL.*, 1981, at 74 (Cal. Dept. of Justice). Chief Justice Cardozo noted that, under the controlling law, not only did a citizen have a duty to aid a commanding policeman in specific circumstances, but this duty to prevent crime may even extend to the use of "whatever implements and facilities are convenient and at hand." *Babington v. Yellow Taxi Corp.*, 250 N.Y. 14, 16-17, 164 N.E. 726, 727 (1928) (implies state can compel people to own arms).

"Private citizens inevitably play an important role in controlling crime. By limiting their exposure to risk, investing in locks and guns, . . . private citizens affect the overall level of crime, and the distribution of the benefits and burdens of policing." We should not "forget that private policing was the only form of policing for centuries . . ." Those who think of private enforcement as evidence of "dangerous vigilantes forget the value of private crime-control efforts, and the crucial difference between vigilantes and responsible citizens playing their traditional role in crime control." The legitimate role of private citizens is to "limit their functions to deterrence and, occasionally, apprehension; they neither judge guilt nor mete out punishment." Moore & Kelling, "*To Serve and Protect*": *Learning From Police History*, 70 *THE PUBLIC INTEREST* 49, 69 (1983).

The state has the authority to train its able-bodied men so that they may perform military or constabulary duties when called upon. *Hamilton v. Regents of Univ. of Cal.*, 293 U.S. 245, 260 (1934), *reh'g denied*, 293 U.S. 633 (1935).

29. *Bowers v. DeVito*, 686 F.2d 616, 618 (7th Cir. 1982).

30. "The conflicting rights involved here are the individual's rights to bear arms and the state's right, indeed its duty under its inherent police power, to make reasonable regulations for the purpose of protecting the health, safety, and welfare of the people. . . ."

missive language enunciated in the constitutional guarantee,<sup>31</sup> although the permissive language does not preclude the enactment of regulations outside the scope of the permissive language.<sup>32</sup> On the other hand, the constitution is not a grant of power but a limitation on the exercise of power. While generally the legislature may exercise all those powers inherent in the people which are not delegated to another branch of government, the legislature cannot enact laws which will supersede constitutional provisions adopted by the people.<sup>33</sup> The police power cannot "violate some positive mandate of the constitution."<sup>34</sup> In other words a "governmental body . . . cannot under the guise of the police power enact unreasonable and oppressive legislation or that which is in violation of the fundamental law."<sup>35</sup>

The framers of the arms guarantee may be assumed to have been aware of crime. Nevertheless, they balanced the in-

To be sure, the state legislature cannot, in the name of the police power, enact laws which render nugatory our Bill of Rights and other constitutional protections.

But we do not read this statute as an attempt to subvert the intent of Article II, Section 13. The statute simply limits the possession of guns and other weapons by persons who are likely to abuse such possession." *People v. Blue*, 190 Colo. 95, —, 544 P.2d 385, 390-91 (1975) (upholding a felon in possession statute) (citations omitted).

31. Proscribing organizing, maintaining, or employing an armed body of men: ARIZ. CONST. art. 2, § 26; WASH. CONST. art. I, § 24. Proscribing concealed carry: COLO. CONST. art. II, § 13; IDAHO CONST. art. I, § 11; KY. CONST. Bill of Rights, § 1, para. 7; LA. CONST. art. I, § 11; MISS. CONST. art. 3, § 12; MO. CONST. art. I, § 23, MONT. CONST. art. II, § 12; N.M. CONST. art. II, § 6; N.C. CONST. art. I, § 30. Manner of bearing arms may be regulated: FLA. CONST. art. I, § 8; GA. CONST. art. I, § 1 para. 5; OKLA. CONST. art. 2, § 26; TENN. CONST. art. I, § 26; TEX. CONST. art. I, § 23. The right may be regulated: UTAH CONST. art. I § 6. The right is subject to the police power: ILL. CONST. art. I, § 22. Besides proscribing concealed carrying, the Idaho guarantee also allows minimum sentences for crimes committed while in possession of a firearm, and allows punishment for misuse of arms and possession by convicted felons.

32. *State v. Dawson*, 272 N.C. 535, —, 159 S.E.2d 1, 10-11 (1968) (permissive language inserted as a matter of "superabundant caution").

33. *Kilpatrick v. Super Ct. of Maricopa County*, 105 Ariz. 413, 466 P.2d 18, 20-21 (1970).

34. "The only limitations upon the legislature in the exercise of its police power is that the statute must reasonably tend to correct some evil or promote some interest of the State and not violate some positive mandate of the constitution." *People v. Warren*, 11 Ill. 2d 420, 424, 143 N.E.2d 28, 31 (1957).

35. *Junction City v. Mevis*, 226 Kan. 526, 535, 601 P.2d 1145, 1152 (1979) (quoting *Delight Wholesale Co. v. City of Overland Park*, 203 Kan. 99, 453 P.2d 82 (1969)) (gun ordinance in *Mevis* voided as being overly broad).

terests and decided to secure a right to keep and bear arms in the face of any possible problems such a right might entail. For example, the colonies were not free from crime. In 1630, John Billington was hanged by the pilgrims at Plymouth colony for murdering John Newcomen with a blunderbuss. In 1678, Thomas Hellier was hanged in Westover, Virginia, for hacking three people to death. Thomas Lutherland was hanged February 23, 1691, in New Jersey for murdering John Clark, a boat trader, and stealing his supplies. Alexander White was hanged at Cambridge, Massachusetts, on November 18, 1784, for murder and piracy.<sup>36</sup> The Framers apparently felt that crime must be prevented by the penitentiary and gallows, and not by a general deprivation of a constitutional right.

The task is to harmonize the tension between the police power and a constitutional guarantee. Accordingly, a textual analysis of the guarantee must focus on to whom the right belongs, what is the purpose or reason of the right, and what arms are protected. The boundaries of the right are established once these issues are defined and delineated. The police power then cannot breach those boundaries, for "constitutions are not made to create rights in the people, but in recognition of, and in order to preserve them, and that if any are specially enumerated and specially guarded, it is only because they are peculiarly important or peculiarly exposed to invasion."<sup>37</sup>

#### IV. COLLECTIVE RIGHT VERSUS INDIVIDUAL RIGHT DEBATE

The collective right view claims that while all of the people have a right, the individual person has no right.<sup>38</sup> This es-

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36. J. NASH, *BLOODLETTERS AND BADMEN* 55, 255, 345, 606 (1973). "[A]rguments of policy must give way to a constitutional command . . ." *Payton v. N.Y.*, 445 U.S. 573, 602 (1980). In Maryland, police stopped 2,000 cars over one weekend in a drunk driving campaign. They arrested four drivers. *Wash. Post*, Dec. 30, 1982, A 1, col. 4, at A 7, col. 1. Rights cannot be swept aside or ignored simply to make it convenient for the state to get at a small criminal element. Such an approach would render nugatory the benefits of a written constitution.

37. 2 J. TUCKER, *THE CONSTITUTION OF THE U.S.* 688 (1899).

38. *City of Salina v. Blaksley*, 72 Kan. 230, 83 P. 619, 620 (1905) (In interpreting a provision of the Kansas Constitution, which stated that "The people have the right to bear arms for their defense and security," the Supreme Court of Kansas stated that it "refers to the people as a collective body. . . Individual rights are not con-

entially means that the right to bear arms protects no one and guarantees nothing, for regardless of how draconian and unconstitutional a law may be, no individual would have standing to challenge such a law.<sup>39</sup>

The true inquiry as to the meaning of a constitutional guarantee concerns its understanding by the voters who, by their vote, have given life to the product of the convention.<sup>40</sup> The voters' understanding of a constitutional provision is determined by the common and ordinary meaning of the words employed.<sup>41</sup> Those words "will be understood in the sense most obvious to the common understanding, without resort to subtle and forced construction for the purpose of limiting or extending their operation."<sup>42</sup> Thus if the term "people" is used in the Bill of Rights to guarantee the individual the equal protection of the law,<sup>43</sup> to assembly and petition,<sup>44</sup> and freedom from unlawful searches,<sup>45</sup> it is incredible that the term "people" is then used strictly in a collective sense in guaranteeing the right to bear arms.<sup>46</sup> Therefore, a word repeatedly used in a constitution will bear the same meaning throughout the instrument.<sup>47</sup>

The seminal case which nullified the right to bear arms by holding that it is solely a collective right is *City of Salina v. Blaksley*.<sup>48</sup> James Blaksley was convicted of carrying a pis-

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sidered in this section.").

39. Standing to sue is lacking where a party has a general interest common to all members of the public. *Schlesinger v. Reservists Committee to Stop the War*, 418 U.S. 208 (1974).

40. *People ex rel. Cosentino v. Adams County*, 82 Ill. 2d 565, 413 N.E.2d 870, 871 (1980).

41. *Burke v. Snively*, 208 Ill. 328, 340, 70 N.E. 327, 329 (1904) (Words "shall be given the meaning which they bear in ordinary use among the people").

42. *People v. Stevenson*, 281 Ill. 17, 25-26, 117 N.E. 747, 750 (1917).

43. KAN. CONST. Bill of Rights, §2.

44. *Id.* §3.

45. *Id.* §15.

46. *Id.* §4.

47. *Kirkpatrick v. King*, 228 Ind. 236, \_\_\_, 91 N.E.2d 785, 789 (1950). "[T]he term 'people,' as used in the [state] constitution, is broad and comprehensive, and comprises generally all of the individual inhabitants of the state." *State v. Kofines*, 33 R.I. 211, \_\_\_, 80 A. 432, 437 (1911).

48. 72 Kan. 230, 83 P. 619 (1905). Restricting the right to bear arms to a collective right has been specifically rejected by other courts. See, e.g., *People v. Nakamura*, 99 Colo. 262, 62 P.2d 246 (en banc 1936); *State v. Dawson*, 272 N.C. 535, \_\_\_, 159 S.E.2d 1, 9 (1968).

tol within the city "while under the influence of intoxicating liquor."<sup>49</sup> The conviction could have been sustained simply because such conduct is outside the boundaries of the guarantee.<sup>50</sup> The court chose "to treat the question [of bearing arms] as an original one."<sup>51</sup> It misread *In re Brickey*<sup>52</sup> by claiming that the case sanctioned the carrying of concealed weapons on constitutional grounds. *Brickey* struck down a statute which forbade the carrying of a pistol in town in any manner. The *Brickey* court specifically held that forbidding the carrying of concealed weapons would be a valid regulation of the arms right. The court also misread *Commonwealth v. Murphy*<sup>53</sup> by claiming that *Murphy* strongly supported the court's position. *Murphy* upheld a conviction for unauthorized parading by armed men. The *Murphy* court merely cited *Presser v. Illinois*,<sup>54</sup> which involved an unlicensed armed parade, in upholding the conviction.

The *Blaksley* court's claim that a Bill of Rights guarantee merely insures the people collectively a narrow right to bear arms only in the organized militia or any military organization provided by law<sup>55</sup> lacks other jurisprudential support. The Kansas Constitution defines the militia as all able-bodied citizens between twenty-one and forty-five years of age.<sup>56</sup> The Kansas Constitution also authorizes the legislature to organ-

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49. *Salina v. Blaksley*, 72 Kan. 230, —, 83 P. 619, 620 (1905).

50. Carrying a gun while drunk is outside the protected boundaries of the right to bear arms. *People v. Garcia*, 197 Colo. 550, 595 P.2d 228 (1979)(en banc); *State v. Shelby*, 90 Mo. 302, 2 S.W. 468 (1886). The right to arms is subject to regulations to promote the peace, order and security of society, "provided they do not nullify the constitutional right or materially embarrass its exercise." E. FREUND, *THE POLICE POWER* 90-91 (1904). "A statute which, under the pretense of regulating, amounts to a destruction of the right, or which requires arms to be so borne as to render them wholly useless for the purpose of defense, would be clearly unconstitutional." *State v. Reid*, 1 Ala. 612, 616 35 Am. Dec. 46 (1840). The prevailing view is that prohibiting concealed carrying of weapons does not infringe the private right to bear arms. "Any one, carrying a weapon for a laudable purpose, will not desire to conceal it." C. TIEDEMAN, *A TREATISE ON THE LIMITATIONS OF POLICE POWER IN THE U.S.* 13-14, 503 (1886).

51. *Salina v. Blaksley*, 72 Kansas. 230, —, 83 P. 619, 620 (1905).

52. 8 Ida. 597, 70 P. 609 (1902).

53. 166 Mass. 171, 44 N.E. 138 (1896).

54. 116 U.S. 252 (1886).

55. 72 Kan. 230, —, 83 P. 619, 620-21 (1905).

56. KAN. CONST. art. VIII, §1.

ize, equip and discipline the militia.<sup>57</sup> This demonstrates that any collective right to bear arms in the militia is adequately covered by the militia article of the Kansas Constitution.<sup>58</sup>

Furthermore, the state's power to legislate on militia matters existed prior to the formation of the constitution and remains with the states.<sup>59</sup> The right of a state to maintain and use its militia is a power essential to the existence of a state.<sup>60</sup> The state has the authority to train its able-bodied citizens so that they may perform military duties or constabulary duties when called upon.<sup>61</sup>

The collective right theory suffers from a logical defect. It is conceptually difficult to see how something can exist in a whole without existing in any of its parts. The collectivists essentially claim that there is a nebulous entity that exists somewhere between the individual and the state which is so important that the Framers protected it with a constitutional guarantee. The respected Judge Cooley rejected the collective right view:

It may be supposed from the phraseology of this provision that the right to keep and bear arms was only guaranteed to the militia; but this would be an interpretation not warranted by the intent. The militia, as has been elsewhere explained, consists of those persons who, under the law, are liable to the performance of military duty, and are officered and enrolled for service when called upon. But the law may make provision for the enrolment [sic] of all who are fit to perform military duty, or of a small number only, or it may wholly omit to make any provision at all; and if the right were limited to those enrolled, the purpose of this guaranty might be defeated altogether by the action or neglect to act of the government it was meant to hold in check. The meaning of the provision undoubtedly is, that the people, from whom the militia must be taken, shall have the right to keep and bear arms, and they need no permission or regulation of

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57. *Id.* §2.

58. *Id.* §§ 1-4.

59. *Houston v. Moore*, 18 U.S. (5 Wheat.) 1, 16-17 (1820). This reflects John Marshall's view that the states had retained their powers over the militia. 3 J. ELLIOT, *DEBATES ON THE FEDERAL CONSTITUTION* 419-21 (1836).

60. *Luther v. Borden*, 48 U.S. (7 How.) 1, 45 (1849).

61. *Hamilton v. Regents of Univ. of Cal.*, 293 U.S. 245, 260 (1934).

law for the purpose. But this enables the government to have a well regulated militia; for to bear arms implies something more than the mere keeping; it implies the learning to handle and use them in a way that makes those who keep them ready for their efficient use; in other words, it implies the right to meet for voluntary discipline in arms, observing in doing so the laws of public order.<sup>62</sup>

Kansas history of the nineteenth century demonstrates that the people were undoubtedly concerned with personal defense.<sup>63</sup> The guarantee to arms of the 1859 Kansas Constitution<sup>64</sup> is an exact copy of Ohio's 1851 constitutional guarantee,<sup>65</sup> and Ohio courts have interpreted their provision to secure an individual right to self-defense.<sup>66</sup> Thus the independent clause, containing command language, that "[t]he people have a right to bear arms for their defense and security" was undoubtedly intended to include a personal right to bear arms to protect one's person, family, or property against unlawful injury and to secure from unlawful interruption the enjoyment of life, limb, family or property. The autonomy of the right to arms clause is not undermined by the presence in the same section of independent clauses dealing with standing armies and the subordination of the military to the civil power, for arms guarantees in other states have similar clauses and their courts have found an individual right to bear arms for self-defense.<sup>67</sup> Hence, any claim that the arms guarantee is in-

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62. T. COOLEY, GENERAL PRINCIPLES OF CONSTITUTIONAL LAW IN THE UNITED STATES OF AMERICA 298-99 (3rd ed. 1898).

63. *Parman v. Lemmon*, 119 Kan. 323, \_\_\_, 244 P. 227, 231 (1925) (Dawson, J., dissenting), *rev'd on rehearing*, 120 Kan. 370, 244 P. 232 (1926). The dissent was, in effect, adopted as the opinion of the majority on rehearing.

64. KAN. CONST. Bill of Rights, §4.

65. OHIO CONST., art. I, §4.

66. *Mosher v. City of Dayton*, 48 Ohio St. 2d 243, \_\_\_, 358 N.E.2d 540, 543 (1976) ("the right of an individual to bear arms" may be regulated in a "reasonable manner"); *City of Akron v. Dixon*, 36 Ohio Misc. 133, 303 N.E.2d 923, 924 (Akron Mun. Ct. 1972) ("the right secured by the Constitution . . . speaks of the citizen's self defense and security and to his right to attain those ends by bearing arms."); *State v. Hogan*, 63 Ohio St. 202, \_\_\_, 58 N.E. 572, 575 (1900) (individual right "for defense of self and property").

67. N.C. CONST. art. I, §30; *State v. Dawson*, 272 N.C. 535, 159 S.E.2d 1 (1968); *State v. Kerner*, 181 N.C. 574, 107 S.E. 222 (1921); OHIO CONST. art. I, §4. See note 66, *supra*; OR. CONST. art. I, §27; *State v. Kessler*, 289 Or. 359, 614 P.2d 94 (1980); Vt. CONST. ch. I, art. 16; *State v. Rosenthal*, 75 Vt. 295, 55 A. 610 (1903).

extricably linked and strictly limited to military matters rests on a foundation of quicksand. The *Blaksley* decision disingenuously turns a constitutional guarantee into an intangible abstraction.

No attempt will be made to examine textual differences based solely on whether plural terms, such as people or citizens, or singular terms, such as person or citizen, are used because only one state, Massachusetts, has followed *Blaksley*.<sup>68</sup>

The collectivists' argument should not be followed by the courts because it has no historical support, no case law support prior to the Kansas decision, and is illogical since the very concept of a right is individual. The principle of rigid *stare decisis* has no application to an unconstitutional law or to even a course of action taken by the courts. "That an unconstitutional action has been taken before surely does not render that same action any less unconstitutional at a later date."<sup>69</sup> On one occasion, the U.S. Supreme Court branded a whole line of decisions it had pursued for nearly a century "an unconstitutional assumption of power by the courts of the United States which no lapse of time or respectable array of opinion should make us hesitate to correct."<sup>70</sup>

The term "people" should be interpreted to include individuals. However, all individuals are not guaranteed the right to keep and bear arms. The Framers were mindful that certain groups are not protected because they fall into a traditional high-risk category. Thus it matters not that the Framers used in the arms guarantee the term people, citizens, person or citizen. Felons, persons of tender years, idiots and lunatics are classes that have almost universally been excluded from the arms guarantee.<sup>71</sup>

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68. *Commonwealth v. Davis*, 369 Mass. 886, 343 N.E.2d 847 (1976).

69. *Powell v. McCormack*, 395 U.S. 486, 546-47 (1969).

70. *Erie R.R. v. Tompkins*, 304 U.S. 64, 79 (1938) (quoting Holmes, J., dissenting in *Black & White Taxicab Co. v. Brown & Yellow Taxicab Co.*, 276 U.S. 518, 533 (1928)). See also *Monell v. Department of Social Services*, 436 U.S. 658 (1978); cf. *Brown v. Board of Ed.*, 347 U.S. 483 (1954) with *Plessy v. Ferguson*, 163 U.S. 537 (1896).

71. At common law a felony is such crime as occasions a forfeiture of all the offender's lands or goods and often subjects him to capital punishment. 4 W. BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND \*94. While at common law usually only the most serious offenses were felonies and the wrongful act had to be accompanied by a guilty mind, the modern trend is to make some felonies a strict liability

## V. CONSTITUTIONALLY PROTECTED ARMS

A textual analysis of state constitutions reveals that two separate categories of arms are protected: (A) those suitable

offense, even though for the most part such offences are *mala prohibita* and not *mala in se*. For example, the mere possession of an unregistered rifle with a barrel under 16 inches is punishable by 10 years and a \$10,000 fine. 26 U.S.C.A. §§ 58-15 (a) (3), 5861 (d), 5871 (1980). To prevent the people from being disarmed by the expedient of classifying regulatory offenses as felonies, the disqualification for felons should be restricted to common law felonies and their modern equivalents and to offenses requiring some state of mind above strict liability which are inherently inimical to life and property. The harshness of a felony conviction for a regulatory offense requiring no criminal intent was acknowledged in *United States v. Ruisi*, 460 F.2d 153, 157 (2nd Cir. 1972) ("application for a Presidential pardon would seem to be justified.") Congress has already recognized a narrow exception to the felony disqualification by exempting antitrust violations, unfair trade practices, restraint of trade, or other similar offenses relating to the regulation of business practices. 18 U.S.C.A. §921 (a) (20) (1976). For a list of disqualifications involving felons see *Doe v. Webster*, 606 F.2d 1226, 1233-34 (D.C. Cir. 1979); *State v. Noel*, 3 Ariz. App. 313, \_\_\_, 414 P.2d 162, 164 (1966).

Persons of tender years lack the experience, understanding, or power of mind to manage their affairs. They normally cannot hold office, vote, marry, enter into a contract, or drink alcohol. Where a parent is lacking, a guardian serves to protect their interests. Even when persons of tender years violate the law, society deals with them in a special court. Idiots and lunatics are so lacking in mental capacity that conservators are appointed to manage their affairs. Often they are institutionalized. Even the common law treated these two groups differently:

If one that wanteth discretion, killeth himselfe (as an infant, or a man *Non compos mentis*) he shall not forfeit his goods, & c. . . .

If one that is *Non compos mentis*, or an idiot, kill a man, this is no felony; for they have no knowledge of good and evill, nor can have a felonious intent, nor a will or mind to do harme. . . .

So it is, if a lunatike person killeth another during his lunacie; (*Cok.* 4. 125.) for all acts done by him in his lunacie, are as the actes of an Idiot. . . . But an infant of such tender yeares, as that he hath no discretion or intelligence, if he kill a man, this is no felony in him.

M. DALTON, *THE COUNTRY JUSTICE* 216-17, 223, 224 (London 1622).

That not all people were included in the arms guarantee can be established by viewing early arms laws relating to freed blacks and American Indians. "Free persons of color have never been recognized as citizens; they are not entitled to bear arms, vote for members of the legislature, or to hold any civil office." *Cooper v. Savannah*, 4 Ga. 68, 72 (1848). See also *State v. Newsom*, 27 N.C. 203 (1844). The sale of firearms to American Indians was prohibited. 2 Stat. 139 ch. 13 (1802) and 2 Stat. 283 ch. 38 (1804).

Some early constitutional guarantees on arms were restricted to "free white men." FLA. CONST. art. I, §21 (1838); TENN. CONST. art. I, § 26 (1834); LA. CONST. tit. III, art. 60 (1845). The passage of the thirteenth and fourteenth amendments means that, except felons, the mentally infirm, and person of tender years, all of the people are guaranteed the right to arms. See also T. COOLEY, *A TREATISE ON CONSTITUTIONAL LIMITATIONS* 57 (7th ed. 1903).

(not indispensable) for militia use, and (B) those suitable for personal defense. In addition, two states also protect arms suitable "for hunting and recreational use and for other lawful purposes."<sup>72</sup> Arms suitable for deterrence against oppression are not treated as a separate category because an armed citizenry, regardless of the armament kept, serves as a latent and implicit deterrent to oppression.<sup>73</sup>

A. Colonial militia laws reveal that smoothbore shoulder arms, carbines, rifles, pistols, ammunition, swords, bayonets,

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72. NEV. CONST. art. I, § 11, para. 1; N.M. CONST. art. II, § 6. In addition, the majority report of the Illinois Bill of Rights Committee indicates an intent to protect under ILL. CONST. art. I, § 22 "arms that law-abiding persons commonly employ for purposes of recreation or the protection of person and property." VI 6th Ill. Const. Convention, *Record of Proceedings* (1969-1970) at 87. In adopting the Virginia Bill of Rights, § 13, the interests of "the sportsmen of this State" and the right "to have arms in their homes, and they think that this will give them some protection" were also cited as reasons. *Proceedings & Debates of Virginia Senate Pertaining to Amendment of Constitution* 393 (Apr. 3, 1969) (Sen. Long).

73. Some cases equate arms "effective as a weapon of war" with arms suitable "to resist oppression." *Fife v. State*, 31 Ark. 455, 458, 461 (1876); *Aymette v. State*, 21 Tenn. (2 Hum.) 154 (1840). Other cases make no such equation. Arms suitable for militia use or self-defense are included in the term "arms" and both categories serve as a deterrent to oppression because historically "the arms used by the militia and for personal protection were basically the same weapons." *State v. Kessler*, 289 Or. 359, —, 614 P.2d 94, 99 (1980).

The wellspring for a right to have arms for hunting is the Dec. 12, 1787, minority proposal in the Pennsylvania convention:

That the people have a right to bear arms for the defence of themselves and their own State, or the United States, or for the purpose of killing game; and no law shall be passed for disarming the people or any of them, unless for crimes committed, or real danger of public injury from individuals; and as standing armies in the time of peace are dangerous to liberty, they ought not to be kept up; and that the military shall be kept under strict subordination to and be governed by the civil power.

PENNSYLVANIA AND THE FEDERAL CONSTITUTION 1787-1788, 422 (1888).

The Pennsylvania minority was the first to propose an extensive Bill of Rights and their seminal ideas found their way into the Bill of Rights and became the first, second, fourth, fifth, sixth, eighth, and tenth amendments of the United States Constitution. E. DUMBAULD, *THE BILL OF RIGHTS AND WHAT IT MEANS TODAY* 50-56 (1957). The Pennsylvania minority proposal reveals an intent to guarantee the traditional uses of the times: for militia use, for self-defense, and for hunting. The reference to hunting was probably an effort to prevent the enactment of game laws designed to disarm the people. It also demonstrates that the common understanding of "to bear arms" was not restricted solely to militia purposes. In the 18th century "bear" meant "To convey or carry." S. JOHNSON, *A DICTIONARY OF THE ENGLISH LANGUAGE (UNPAGINATED)* (1979 reprint of 1755 ed.) The arms provision in LA. CONST. tit. III, art. 60 (1845), used the term "carry arms."

pikes, and lances are arms suitable for militia use.<sup>74</sup> To this list may also be added the shotgun.<sup>75</sup> Since all those weapons are constitutionally protected arms, all stand on an equal footing. A constitutionally protected arm cannot be singled out for abridgement, for no authority exists for the proposition that one form of constitutionally protected conduct may be prohibited because alternative forms of constitutionally protected conduct are available.<sup>76</sup>

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74. The arms and equipment a New York militiaman was required to furnish himself included a "muskett or fuzee . . . pike . . . Sword . . . Lance . . . pistoll . . . case of good pistols . . . rapier . . . carabine . . . powder . . . bullets . . . ." 1 THE COLONIAL LAWS OF NEW YORK FROM 1664 TO THE REVOLUTION 232 (1894).

In Virginia the list included "a firelock, muskett or fusee well fixed, a good sword and cartouch box, and six charges of powder . . . at his place of abode two pounds of powder and eight pounds of shott . . . holsters . . . a case of pistols well fixed, sword . . . carabine . . . ." 3 LAWS OF VIRGINIA FROM THE FIRST SESSION OF THE LEG. IN 1619 AT 338 (W. Hening ed. 1823). Virginia also required "that every man be provided with a good Rifle if to be had, or otherwise with a common firelock . . . [and] that every horseman be provided with a good horse, bridle, saddle with pistols and Holsters, a carbine or other short firelock . . . ." 1 THE PAPERS OF THOMAS JEFFERSON 160-61 (J. Boyd ed. 1950).

In Connecticut the arms included "sword, case of pistols and holsters . . . ." "Our horsemen are armed with pistols and carbines." 3 THE PUBLIC RECORDS OF THE COLONY OF CONN. 12 & 295 (H. Trumbull ed. 1859). In Rhode Island the arms included "carbine and pistol . . . ." 3 RECORDS OF THE COLONY OF R.I. & PROVIDENCE PLANTATIONS IN NEW ENGLAND 433 (J. Bartlett ed. 1856). In New Jersey the arms included "musket or Fusee, well fixed, and a Bayonet fitted to it, a cutting Sword or Cutlace, . . . Holsters, a Case of Pistols . . . ." 6 DOCUMENTS RELATING TO COLONIAL HISTORY OF N.J. 192-93 (W. Whitehead ed. 1888).

75. In the New World the shotgun was used for hunting, self-defense, and military purposes. T. SWEARENGEN, *THE WORLD'S FIGHTING SHOTGUNS* 1-3 (1978). "In 1621, Plymouth colony advised prospective newcomers to bring fowlers with them for use in obtaining food and for defense against possible Indian attacks." *Id.* at 2. "British General Sir John Burgoyne, of American Revolutionary War fame, raised a Light Dragoon Regiment in 1781, and caused it to be equipped with the blunderbuss." *Id.* at 2. "During the Revolution, General Washington took cognizance of shotgun effectiveness. He encouraged troops to load their [smoothbore] muskets with buck and ball, or with plain buckshot to compensate for the poor long range accuracy of the single musket ball. There is evidence that Americans found such multiple-projectile ammunition quite effective against the British. Its use became widespread, except in rifled arms. General Washington referred to the shot as 'swan drops.'" *Id.* at 3. The shotgun is still used by the military. SMALL ARMS MATERIAL AND ASSOCIATED EQUIPMENT 29-31 (U.S. Army Technical Manual 9-2200; Oct. 1956).

76. "We have not been cited to any authority nor are we aware of any that would permit the total abridgement of one form of constitutionally protected communication simply because there are alternative means of communication possibly available." *N.Y. Public Interest Research Group, Inc. v. Roslyn Estates*, 498 F.Supp. 922, 932 (E.D.N.Y. 1979).

Protected arms under the militia category are "the modern day equivalents of the weapons used by colonial militiamen . . . even if a particular weapon is unlikely to be used as a militia weapon."<sup>77</sup> Weapons such as "cannon or other heavy ordnance not kept by militiamen or private citizens" and "[m]odern weapons used exclusively by the military" are outside the protected boundary because they are not "commonly possessed by individuals."<sup>78</sup>

A distillation of case law indicates that arms suitable for militia use are those which are commonly possessed and which make up the usual arms of the people, those within the people's means, those historically used for such purposes and

77. *State v. Kessler*, 289 Or. 359, —, 614 P.2d 94, 99 (1980). Older cases have held that only large pistols are constitutionally protected arms. See *Fife v. State*, 31 Ark. 455, 460-61 (1876) (not pocket pistols but only "repeaters, which, in recent warfare, have generally superseded the old-fashioned holster, used as a weapon in the battles of our forefathers"); *Andrews v. State*, 50 Tenn. (3 Heisk.) 165, 187 (1871) ("We know there is a pistol of that name which is not adapted to the equipment of the soldier, yet we also know that the pistol known as the repeater is a soldier's weapon—skill in the use of which will add to the efficiency of the soldier"). Modern metallurgy and smokeless powder have reduced the size of pistols suitable for militia use. A survey of military pistols from Argentina to Yugoslavia reveals that most have a barrel length of about four inches. W. SMITH, *SMALL ARMS OF THE WORLD* passim (11th ed. 1977). However, a significant number have barrel lengths over three inches but under four inches. *Id.* at 215, 318, 382, 407, 433. While all of these pistols are centerfire, both the U.S. and U.S.S.R. employ .22 caliber rimfire pistols for training purposes. *Id.* at 476, 528.

The U.S. military's arsenal of self-loading pistols and revolvers includes the .38 caliber revolver with a 2-inch barrel. It is usually carried in a holster. *PISTOLS AND REVOLVERS* 99-106 (U.S. Army Field Manual 23-25; Feb. 1953); *SMALL ARMS MATERIAL AND ASSOCIATED EQUIPMENT* 7-13 (U.S. ARMY TECHNICAL MANUAL 9-2200; OCT. 1956); *PISTOLS AND REVOLVERS* 109 (U.S. Army Field Manual 23-35; July 1960). The U.S. military also purchased "a few thousand" Colt .25 caliber self-loading pocket pistols. R. SUTHERLAND & R. WILSON, *THE BOOK OF COLT FIREARMS* 425 (1971).

The various weaponry used by the Patriots during the Revolutionary War has led writers to comment that as a practical matter the people carried whatever weapons they had into battle. C. COLBY, *REVOLUTIONARY WAR WEAPONS* 12 (1963); *Nunn v. State*, 1 Ca. 243 (1846) (the right belongs to the individual and is not restricted to militia arms). As a practical matter many of the arms commonly possessed by the people (rifles, shotguns, and pistols) and suitable for militia use are also employed by the organized military.

78. *State v. Kessler*, 289 Or. 359, —, 614 P.2d 94, 98-99 (1980). "To him the rifle, the musket, the shotgun, and the pistol are about the only arms which he would be expected to 'bear,' and his right to do this is that which is guaranteed by the Constitution." To suggest "the Constitution intended" that deadly gases, cannon, submarines, and bombs are arms "would be mockery." *State v. Kerner*, 181 N.C. 574, —, 107 S.E. 222, 224 (1921).

their modern equivalents, or those in ordinary use and effective as weapons of war.<sup>79</sup>

To make the right to arms effective, "[t]he right to keep arms necessarily involves the right to purchase them, to keep them in a state of efficiency for use, and to purchase and provide ammunition suitable for such arms, and to keep them in repair."<sup>80</sup> This would also apply to arms suitable for personal defense.

The term "militia" has been defined as all citizens or all males capable of bearing arms.<sup>81</sup> The militia is thus more than the National Guard.<sup>82</sup> The sophisticated organization, equip-

79. *Fife v. State*, 31 Ark. 455, 460-61 (1876); *State v. Kerner*, 181 N.C. 574, \_\_\_, 107 S.E. 222, 224-25 (1921); *State v. Kessler*, 289 Or. 359, \_\_\_, 614 P.2d 94, 98-99 (1980); *Andrews v. State*, 50 Tenn. (3 Heisk) 165, 179 (1871).

80. *Andrews v. State*, 50 Tenn. (3 Heisk) 165, 178 (1871). See also *Halbrook infra* note 167. Of the thirty-nine states with a guarantee to arms, fourteen guarantee only the right to bear arms, as opposed to the right to keep and bear arms. ALA. CONST. art. I, § 26; ARIZ. CONST. art. II, § 26; CONN. CONST. art. I, § 15; IND. CONST. art. I, § 32; KAN. CONST. Bill of Rights, § 4; KY. CONST. Bill of Rights, § I para. 7; OHIO CONST. art. I, § 4; OR. CONST. art. I, § 27; PA. CONST. art. I, § 21; S.D. CONST. art. VI, § 24; UTAH CONST. art. I, § 6; VT. CONST. ch. I, art. 16; WASH. CONST. art. I, § 24; and WYO. CONST. art. I, § 24. This distinction is of no significance because courts and commentators agree that a guarantee to bear arms includes the guarantee to keep arms. See, e.g., *State v. Kessler*, 289 Or. 359, 614 P.2d 94 (1980) (keeping of a club in one's home); *Photos v. City of Toledo*, 19 Ohio Misc. 147, \_\_\_, 250 N.E.2d 916, 927 (1969) ("No law abiding citizen, free from the city's disqualifications, has been or will be precluded from purchasing, keeping or bearing arms."). "[T]o bear arms implies something more than the mere keeping." COOLEY, *supra* note 62.

81. *Burroughs v. Peyton*, 57 Va. 470, 482 (1864) ("the militia embraces the whole arms bearing population . . ."); *Ex Parte McCants*, 39 Ala. 107, 113 (1863). Numerous state constitutions reflect this view. E.g., "A militia shall be provided and shall consist of all persons over the age of seventeen . . ." IND. CONST. art. XII, § 1; "The State militia consists of all able-bodied persons residing in the State . . ." Ill. Const. art. XII, § 1. "[A]ll able-bodied citizens of the state . . ." are the militia. MONT. CONST. art. VI, § 13 (2). The antifederalist view was that "A militia, when properly formed, are in fact the people themselves . . ." and that "the constitution ought to secure a genuine and guard against a select militia . . ." by having the militia include "all men capable of bearing arms . . ." 2 THE COMPLETE ANTI-FEDERALIST 341 (H.J. Storing ed. 1981). The U.S. Supreme Court has also defined the militia in this broad manner. *United States v. Miller*, 307 U.S. 174, 179 (1939).

82. The terms "militia" or "militiamen" comprehend every citizen-soldier who in time of war or emergency forsakes his civilian pursuits for temporary military duty and are not restricted to the National Guard. *State ex rel. McGaughey v. Grayton*, 349 Mo. 700, \_\_\_, 163 S.W.2d 335, 337 (en banc 1943). The militia is classified into the organized militia and the reserve militia. *Id.* at \_\_\_, 163 S.W.2d at 340. See also *People ex rel. Leo v. Hill*, 126 N.Y. 497, 504, 27 N.E. 789, 790 (1891).

Numerous statutes make the distinction between the militia and the National

ment, and training of the National Guard would indicate that it has undergone a metamorphosis from being an inclusive militia comprised of the people to being almost exclusively troops, and the states may be prevented in times of peace from keeping troops.<sup>83</sup>

Where the purpose of the guarantee is to secure a militia, the people are guaranteed the right to keep and bear arms because they serve as the pool from which the militia is drawn. If a person is disarmed he obviously could not function as a militiaman should the need arise.<sup>84</sup>

The importance of guaranteeing to the people the right to keep and bear arms having militia utility was demonstrated during this century. In the Second World War the militia proved a successful substitute for the National Guard, which was federalized and activated for overseas duty.<sup>85</sup> Members of the militia, many of whom belonged to gun clubs and whose ages varied from sixteen to sixty-five, served without pay and provided their own arms.<sup>86</sup> Their mission was to serve as a local early warning and intelligence source for regular troops and as a delaying force. Their training stressed guerilla tactics, patrolling, demolitions, and roadblock techniques. The firepower of some units was impressive.<sup>87</sup>

The Maryland National Guard, for example, was activated for overseas service. Governor Herbert R. O'Connor then called on men "of all ages and stations in life" to volunteer for the manning of home guard stations for the task of "repelling invasion forays, parachute raids and sabotage uprisings in the state." Before the end of 1943, 15,000 Maryland Minute Men, as these men were designated, manned home guard stations. These men were expected to bring their own arms—rifles, shotguns, pistols—for training and used those arms on guard

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Guard. See, e.g., 10 U.S.C.A. § 311 (1975); 46 West's Cal. Mil. Code § 121 (1955); CONN. GEN. STAT. ANN. § 27-2 (West 1975); and R.I. GEN. LAWS § 30-1-4 (1969).

83. U.S. CONST. art. 1, § 10, cl. 3.

84. *State v. Dawson*, 272 N.C. 535, \_\_\_, 159 S.E.2d 1, 9 (1968). Disarmed people could not serve as a deterrent to oppression. *State v. Kerner*, 181 N.C. 574, \_\_\_, 107 S.E. 222, 225 (1921).

85. U.S. HOME DEFENSE FORCES STUDY at 32, 34 (Office of Sec. of Defense, Mar. 1981).

86. *Id.* at 58, 62-63.

87. *Id.* at 58, 60.

duty. At a time when Nazi submarines were sinking American ships off the Atlantic coast, apprehension was very real.<sup>88</sup>

In Virginia, the National Guard was also activated for overseas duty. It thus became necessary to call upon the local armed citizenry to perform militia duties. They were called the Minute Men, the home guard, or the reserve militia. The shortage of arms prompted members of the militia to borrow twenty-two caliber guns from youngsters. Sportsmen were especially sought after for recruitment in the militia. "Since its personnel would have to furnish its own weapons and ammunition, its membership campaign leaned heavily on sportsmen of the state."<sup>89</sup>

All over the country individuals armed themselves in anticipation of threatened invasion.<sup>90</sup> A manual distributed *en masse* by the War Department recommended the keeping of "weapons which a guerilla in civilian clothes can carry without attracting attention. They must be easily portable and easily concealed. First among these is the pistol."<sup>91</sup>

Historically, militia formations were most effective when responding to obvious threats close to home. They were to harass and impede the enemy wherever possible and to support friendly formations. Consisting of small tactical formations armed with a wide variety of weapons, the militia had actually taken the field against the soldiers of George III and defeated them. The lessons of Vietnam, Nicaragua, Africa, and the Soviet intervention into Afghanistan illustrate the limitations of push-button warfare against dispersed small units fighting in their own territory. The militia's critics tend to ignore this strength and concentrate only on the militia's weakness.<sup>92</sup>

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88. BAKER, *I Remember—The "Army" With Men From 16 to 79* [Baltimore] Sun Magazine, Nov. 16, 1975, at 46; 3 STATE PAPERS & ADDRESSES OF GOV. O'CONNOR 616-20 (Mar. 10, 1942). On file with the law review is a copy of an honorable discharge certificate from the World War II Maryland Minute Men and an affidavit from a former member swearing that he performed militia duties armed with his own rifle and pistol.

89. M. SCHLEGEL, VIRGINIA ON GUARD—CIVILIAN DEFENSE AND THE STATE MILITIA IN THE SECOND WORLD WAR 45, 131 (1949).

90. *To Arms*, TIME, Mar. 30, 1942, at 1.

91. B. LEVY, GUERRILLA WARFARE 55 (Penguin Books & Infantry Jour. 1942); B. LEVY, GUERRILLA WARFARE 56 (Panther Publications 1964).

92. LANE, *The Militia of the U.S.*, MILITARY REVIEW 13, 16 (Mar. 1982). One

B. Arms guaranteed for personal defense are those weapons commonly kept by the people today, and those commonly kept at the time the constitution was adopted and their modern equivalents.<sup>93</sup> The protected arms would include "hand-carried weapons commonly used by individuals for personal defense."<sup>94</sup> Examples of such arms would be "hunting muskets or rifles, hatchets, swords, and knives . . . [and] billy club;"<sup>95</sup> modern firearms "such as semi-automatic shotguns, semi-automatic pistols and rifles,"<sup>96</sup> and "ordinary guns, swords, revolvers, or other weapons usually relied upon by good citizens for defense or pleasure."<sup>97</sup>

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British officer mistakenly described the Patriots as "a mob without order or discipline, and very awkward at handling their arms." *THE SPIRIT OF SEVENTY-SIX* 150 (H. Commager & R.B. Morris eds. 1967). The Patriots were also described as "skillful enough in the use of musket or rifle . . . [and] . . . better suited to frontier warfare against the Indians than to the discipline of an army camp." *Id.* at 151-52.

Therefore, a well-regulated militia means one that has had some training or at least is composed of people who have had some training. This is to prevent the militia from becoming a disorderly mob, dangerous not to the enemy but to its own state and country. In its obsolete form pertaining to troops, *regulated* is defined as "properly disciplined." 7 *THE OXFORD ENGLISH DICTIONARY* 380 (1933). Moreover, *discipline* in relation to arms is defined as "training in the practice of arms." 3 *THE OXFORD ENGLISH DICTIONARY* 416 (1933). The framers intended that this "training in the practice of arms" for potential militia duty would be advanced, if not ensured, by the right of the people to keep and bear their own arms.

93. *State v. Kessler*, 289 Or. 359, \_\_\_, 614 P.2d 94, 98-99 (1980); *Rinzler v. Carson*, 262 So. 2d 661, 666 (Fla. 1972); *People v. Brown*, 253 Mich. 537, \_\_\_, 235 N.W. 245, 246-47 (1931).

94. *State v. Kessler*, 289 Or. 359, \_\_\_, 614 P.2d 94, 100 (1980).

95. *Id.* at \_\_\_, 614 P.2d at 98,100.

96. *Rinzler v. Carson*, 262 So. 2d 661, 666 (Fla. 1972).

97. *People v. Brown*, 253 Mich. 537, \_\_\_, 235 N.W. 245, 247 (1931). There is an effort to ban pistols. However, the people understand the term "arms" to include the pistol because of its presence in our culture. In Shakespeare's *Twelfth Night* (circa 1601), Act. II, scene V, line 34, the "pistol" is mentioned. Thus both old cases, *State v. Shelby*, 90 Mo. 302, 2 S.W. 468, 469 (1886) ("a revolving pistol comes within the description of such arms as one may carry for the purposes designated in the constitution. . . ."), and new cases, *Schubert v. DeBard*, 398 N.E.2d 1339 (Ind. App. 1980) ("handgun"), recognize the pistol as a constitutionally protected arm. This understanding prompted a court to state: "We are of the opinion, however, that 'pistol' *ex vi termini* is properly included within the word 'arms,' and that the right to bear such arms cannot be infringed. The historical use of pistols as 'arms' of offense and defense is beyond controversy." *State v. Kerner*, 181 N.C. 574, \_\_\_, 107 S.E. 222, 224, (1921) (law requiring obtaining permit and posting bond to carry pistol unconcealed voided). A pistol is an arm which serves many lawful purposes. *Commonwealth v. McHarris*, 246 Pa. Super. 488, 371 A.2d 941 (1977).

## VI. TEXTUAL DIFFERENCES

*Militia Purpose*

Five state constitutions guarantee that "the right of the people to keep and bear arms shall not be infringed"<sup>98</sup> and assign a well regulated militia as a purpose for this right. Arms suitable for militia use are protected under these guarantees.<sup>99</sup> These guarantees protect a right to arms for militia use, for self-defense, and as a deterrent to oppression. Courts have held that the militia purpose does not restrict the traditional uses for which arms may be kept and borne:

The constitutional provision which forbids any prohibition upon the people to bear arms and use them effectively by being accustomed to their use should be strictly and stoutly maintained, for we know not when the occasion may again require the assertion of that doctrine which was once familiar throughout this country that "resistance to tyranny is obedience to God," or for the defense of person and property against mobs and violence.<sup>100</sup>

The arms must be carried openly, and the object is "the right to acquire and retain a practical knowledge of the use of fire arms."<sup>101</sup> That end would not be frustrated by a prohibition of carrying deadly weapons while drunk, or to a church, polling place, court, or public assembly, or in a manner calculated to inspire terror.<sup>102</sup> Echoing this view is an early case

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98. ALASKA CONST. art. I, § 19; HAWAII CONST. art. I, § 15; N.C. CONST. art. I, § 30; S.C. CONST. art. I, § 20; VA. CONST. art. I, § 13. These guarantees track the language of the U.S. CONST. amend. II.

99. See notes 74, 75, 77, 79 *supra*. VA. CONST. art. I, § 1 guarantees a right to self-defense. Thus in Virginia arms for personal defense are also guaranteed. See notes 93-97 *supra*.

100. *State v. Kerner*, 181 N.C. 574, \_\_\_, 107 S.E. 222, 225 (1921). The right to self-defense was assumed by the Framers. *State v. Dawson*, 272 N.C. 535, \_\_\_, 159 S.E.2d 1, 9 (1968). See also *Nunn v. State*, 1 Ga. 243 (1846).

101. *State v. Kerner*, 181 N.C. 574, \_\_\_, 107 S.E. 222, 225 (1921). LA. CONST. Bill of Rights, art. 3 (1879) tracked the language of the second amendment. "When we see a man with a musket to shoulder, carbine slung on back, or pistol belted to his side, or such like, he is bearing arms in the constitutional sense." *State v. Bias*, 37 La. Ann. 259, 260 (1885).

102. *State v. Dawson*, 272 N.C. 535, \_\_\_, 159 S.E.2d 1, 10 (1968); *State v. Kerner*, 181 N.C. 574, \_\_\_, 107 S.E. 222, 225 (1921); *Hill v. State*, 53 Ga. 473 (1874) (GA. CONST. art. I, § 1, para. 14 tracked the second amendment.). In *Rex v. Dewhurst*, 1 State Trials, New Series 529, 601 (1820), the trial judge instructed the jury: "A man