LICENSE TO CARRY CONCEALED WEAPONS PROVISIONS

And

OTHER CHANGES

Update for

MISSOURI WEAPONS AND SELF-DEFENSE LAW

17 March, 2011
to include
District of Columbia vs Heller
Second Amendment Ruling

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LAWYER REFERRALS

I don't know most of these lawyers. They have expressed an interest in representing the gun community.

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CAUTION

The following, and the book, list a number of cases. Prior success does not necessarily indicate future success. It doesn't have to make sense, its just the

law.

CREDENTIALS

I am an instructor certified by the National Rifle Association and the American Association of Certified Firearms Instructors. For thirteen years I taught the legal section of the personal protection course offered by the Western Missouri Shooters Alliance. I have concentrated in weapons and self-defense law for over twenty years.

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17 MARCH 2011 UPDATE MATERIALS

CASTLE DOCTRINE

The Castle Doctrine allows a home resident to act in "accelerated self-defense" on the theory that anyone breaking into an occupied home has evil intentions towards the residents. It appears in the Bible in the law of Moses and has been part of Anglo-American law for over a thousand years, dating to King Alfred the Great's "House Sitting" law. It does not apply, of course, to law enforcement executing a search warrant. Missouri's Castle Doctrine was changed in 2008 to a pure Castle Doctrine. A 1964 Missouri Supreme Court decision had limited the defense to the moment the criminal was bursting through the shattered remains of door or window. Once inside he could safely wander the home so long as he did not attack the residents.

The 2008 reform allowed the home resident to act in accelerated self-defense **after** the criminal was inside, and I would say a greater threat. The problem developed when the jury instructions committee revised the

explanation of law meant to guide the jury. They inserted, without any statutory authority, a requirement that the criminal threaten "unlawful force." They did not define unlawful force. Members of the committee have said that this was inserted due to the fear that a home owner would find a burglar passed out asleep on the couch an execute him with impunity, or that a burglar would be stuck in a window and helpless when shot. They showed more concern for the highly speculative misadventures of criminals than for homeowners who actually have been convicted for killing criminals who have broken into the home. This instruction placed the burden of proving unlawful force on the homeowner.

In 2010 the Missouri legislature responded by amending RSMo 536.031. The effect was a number of changes; first, that if a person enters unlawfully or remains unlawfully on "private property" the owner is entitled to use force, including deadly force. The term "private property" is defined at RSMo 563.011 to include real property that is privately owned or leased. It therefore includes property outside the home. This should not be taken as permission to open fire on mere trespassers, as RSMo 563.011(9) requires that the trespasser defy a lawful order not to enter personally communicated by the owner or a representative. This would not appear to include signs, however worded.

Under RSMo 563.031.3 a person is not required to retreat from private property. This means that if one is outside the home, but on land owned or rented by the person, retreat is not required at all in order to claim self-defense. Under RSMo 563.031.5 the burden is on the state to prove beyond a reasonable doubt that the defendant **did not** believe that the use of such force was necessary to defend against what he or she reasonably believed was the use or imminent use of unlawful force. The new jury instruction now complies with this statute; however, the term "unlawful force" is still not defined. The term "unlawful" is defined as "not authorized by law." This definition is not terribly helpful but indicates that if the burglar threatens some force the citizen did not specifically invite, the citizen may use deadly force.

This means that if the citizen finds an intruder in his home or property or vehicle and reasonably believes that the intruder threatens some unwanted force against some individual immediately present, the homeowner can use deadly force.

REGARDING PROSECUTORS

Under RSMo 571.030 prosecutors and assistant prosecutors are exempt from the law against carrying concealed weapons if they have taken the License To Carry class under RSMo 571.111 subsection 2. It is not necessary that they obtain a license; however, this license is handy proof that they have taken the class. Under RSMo 571.107.1(4) a prosecutor may carry concealed in areas "described in this subdivision." The subparagraph (4) refers to courthouses but paragraph 1 of 571.107 lists all the various places which are prohibited to license holders. It seems that the numbered paragraphs without parenthesis are referred to as "subsections" and the paragraphs numbered in parenthesis are referred to as "subdivisions. This indicates that the prosecutor's new power only refers to the courthouse.

LEGAL WEAPONS FOR CONCEALED CARRY

An assistant Attorney General informally replied to an inquiry claiming that the License To Carry law only allowed carrying handguns. A trial judge in Boone County ruled the same. They are wrong. Under RSMo 571.030 one is exempt from Missouri's concealed *weapons* law if one has a License To Carry. The theory that this law only applies to handguns appears to have been inspired by 571.107 which states that license holders can carry concealed *firearms* (not just handguns) throughout the state with some exceptions. The Missouri legislature had pre-empted the field of firearms legislation (RSMo 21.750). It can therefore be argued that a local government might prosecute a license holder for a concealed knife but not a gun. It is a silly argument, but there it is. If anyone hears of such a case, I would be obliged if you let me know.

CRIMINAL HISTORY AND EXPUNGEMENT

In 2008 the Missouri legislature, in its nearly infinite wisdom, amended RSMo 571.070 to ban knowing gun possession for any person who has been convicted of a felony at any time in any state or federal court. The prior statute banned possession if the person had "pled guilty or been convicted of a dangerous felony within the last five years. The new law is both expansive and limited; guess which part is emphasized.

The law expands the ban to the life of the defendant who has committed any felony. In this way it conforms to federal law. It is limited in that it applies to persons who have been "convicted." The prior law referred to "pled guilty or been convicted." The new law does not apply to persons who have admitted their guilt and pled guilty. This limited scope

must be assumed because the legislature is believed to have used a different language for a reason.

It seems that pardons, expungements, restoration of rights or Suspended Imposition of Sentence would have no purpose if the statute applied to them. The BATF sees it differently. They claim that the Missouri Attorney General sees this statute as affecting persons who have had their records wiped clean. The result is that persons who have ancient, long expunged convictions are suddenly told that they cannot possess firearms or work in the firearms industry. This is wrong on many levels. Rights have been restored to people, and then snatched away without cause. The truly offensive element is that the statute does not have to be interpreted in this fashion. It has always been the law that expungements and pardons and the like have erased convictions. The new statute does not have to be interpreted as requiring a repetition of this principle. In short gun owners who did something stupid a generation ago and went to the trouble of having it removed from their records are being abused by the same system which proclaims that we have a constitutional right to own guns.

The Missouri Attorney General's office has not publicly announced their interpretation of RSMo 571.070. If forced to do so they will have to justify this interpretation, they cannot. The course of action I recommend is to get them to issue an Attorney General's Opinion on this point. They will not do so at the request of a citizen. They must do so at the request of a legislator. They may take their sweet time doing so, but they must do so. If a number of legislators make the same request the matter becomes a higher priority. Efforts to make this interpretation official may irritate the legislature which will aid efforts to amend the statute.

To help resolve this question everyone should contact their state senator and legislator and have them request that the Attorney General answer the question; "Does 571.070 prohibit firearms possession by any person who has received a pardon, restoration of rights, expungement or suspended imposition of sentence?"

FELONS WITH ANTIQUE GUNS

In 2010 RSMo 571.070 was amended in 2010 to allow convicted felons to possess antique firearms or replicas thereof. This restores an ability mistakenly taken away in 2008. Probation and parole regulations prohibit possession of any firearm and even bows and arrows. However, once released from Corrections supervision felons can hunt with replica black powder firearms. There are modern muzzle-loading designs called "In-Line" muzzle-loaders. Because they are modern designs and not

replicas the BATF has regarded them as firearms for the purpose of federal possession statutes, but not for sale statutes. It doesn't have to make sense, its just the law.

TRANSPORTING FIREARMS

Two new cases create trouble when transporting guns across state lines. Federal law under 18 U.S.Code §926A states that guns can be transported through any state, regardless of that state's law if it is unloaded and in a locked container, inaccessible and can be possessed in the states of departure and destination. On 22 March, 2010 *Gregg C. Revell v Port Authority of New York* was handed down in the Third US Circuit followed on 30 June, 2010 by *John Torraco v Port Authority of New York* in the Second US Circuit court of appeals. They both involved persons who were traveling by air through New York and New Jersey. Each checked his gun at the airport counter under Transport Security Administration regulations, each was arrested and the gun seized. The various plaintiffs sued under 42 U.S. Code §1983. It appears that §926A is not a federal right; it is at best a defense to criminal charges. Many of these defendants were in New York and New Jersey because their flights had been diverted. I believe that *Torraco* was the case where a Port Authority Police Officer proclaimed, "This is New York City, federal law does not apply!" I ridiculed this comment in an article for "Concealed Carry Magazine." Now it appears that he was right. The criminal charges against the parties were dismissed, but their property was held for years. They were forced to go to jail, pay a bail bond, appear in court and suffer the disruption of their travel plans. I cannot imagine the seizure of any other class of property, much less the arrest of the owner, that would result in two appellate courts treating the abuse as such a trivial matter. These cases were written before the *City of Chicago* case was decided, but do not mention *Heller* or the fact that such a decision was pending.

Both cases stress the burden on a police officer in the field to know federal firearms law and the law of the 50 states. However, law enforcement in these cases consisted of port authority officers at airports who must deal with travelers and require this information. In fact, one of the plaintiffs saw a folder in the Port Authority police office which purported to contain the gun laws of the 50 states. The desk sergeant refused to refer to the volume. The BATF has publications setting out federal and state firearms laws. These publications are available electronically on the BATF website.

Plaintiffs were deprived of their property for years; this was not a trivial inconvenience. It is odd that none of the plaintiffs made a claim for deprivation of property without due process of law.

Both cases stressed that 1983 relief is not available unless administrative remedies have been exhausted, neither case points to any remedy the plaintiff should have pursued.

INTOXICATED WITH GUN

John L. Richard was given the wrong prescription medication from the Veteran's Administration. On 12 November, 2006 he suffered a black-out from the side-effects. His wife called an ambulance. A sheriff's deputy arrived first. The police reports claim that Mr. Richard had threatened suicide and his wife called for the police. The 911 tapes of the call have mysteriously disappeared. Mrs. Richard said that none of this happened and that she refused the deputy's assistance when he came to the door.[1] The deputy seized a gun on a nearby table, and two more from a locked safe. Mrs. Richard attempted to retrieve the firearms the next day, but was told that no such guns had been checked into the property room. A month latter they hired an attorney to threaten a replevin action. A week after the threat Mr. Robinson was arrested for possession of a firearm while intoxicated under RSMo 571.030.1(5). Two years later the trial court dismissed the charges as unconstitutional under *District of Columbia v Heller*, 128 S.Ct. 2783 (2008) which held that citizens have a federal right to own handguns in their home. The Missouri Supreme Court ruled on 17 November, 2009 that drunks are dangerous and have no such right. The impact of the decision was that if one is intoxicated at home, and there is a gun in the house, a felony has been committed; even if only under the influence of prescription medication.

The Missouri legislature changed the statute to require that the firearm not only be possessed, but used in a negligent or unlawful manner. The question then becomes, what shall become of charges under the old wording of the statute? Under RSMo 1.160 charges commenced or pending previous to or at the time when any statutory provision is repealed or amended, shall not be affected by the repeal or amendment. Cases on this statute have not given the benefit of the change to persons who have been convicted. The final sentence of the statute demands that ". . . the trial and punishment of all such offenses, and the recovery of the fines, penalties or forfeitures shall be

[1] Author represented the family a month later in a futile attempt to retrieve the seized guns. Their version of the story has been consistent over the last four years.

had, in all respects, as if the provision had not been repealed or amended, except that all such proceedings shall be conducted according to existing procedural laws." This would appear to allow prosecution for events which are no longer crimes. However prosecutors have not yet shown any enthusiasm for prosecuting charges which do not comport to the amended law. Mr. Richard's charges were dismissed after the new law went into effect.

CONCLUSION

Doubtless there will be more developments. I update these developments at www.KLJamisonLaw.com/author.asp.

LICENSED TO CARRY CONCEALED

On 11 September, 2003, the Missouri Senate overrode the veto of License to Carry. The bill was scheduled to become law thirty days thereafter.

A lawsuit delayed and altered implementation of the law. On 26 February, 2004 the Missouri Supreme court ruled that the law is constitutional, summarily rejecting the plaintiff's constitutionality argument and predictions of disaster. The Court ruled that the law is an "unfunded mandate" under the Hancock Amendment to the Missouri Constitution. This means that the four counties which presented evidence in the lawsuit do not have to take applications for licenses unless they want to (three of them subsequently voluntarily began taking applications). While the law authorizes sheriffs to charge up to $100 for the license, the Court ruled that sheriffs could not charge more than their actual costs or it would be an unconstitutional tax. The plaintiffs asked for a reconsideration of the constitutionality of the law. On 30 March, 2004 the Court reaffirmed its earlier decision. The Court republished its earlier decision, in what it ruled was not a new decision but made one significant change. It ruled that the $100 fee was not raised by the parties and therefore the Court did not issue an opinion on the matter. The fee is therefore a user fee, until someone paying the fee objects. Most sheriffs are handling this by requiring a check or money order in the amount of $38 to cover the fingerprint fees by the Highway Patrol, and another check or money order to cover their costs (up to $62).

The Missouri legislature has passed a Hancock fix to the LTC law. Governor

Matt Blunt signed the bill on 12 July, 2005. This forced St. Louis city and St. Louis county, the only holdout jurisdictions, to begin issuing licenses.

The bill identified the licensing section as RSMo 571.094; however, the Reviser of Statutes has it as RSMo 571.111; it doesn't have to make sense, it's just the law. These and other updates to MISSOURI WEAPONS AND SELF-DEFENSE LAW are available at www.KLJamisonLaw.com.

This is a “shall issue” law. If the applicant fulfills all the qualifications, the sheriff must issue the license. The applicant must take a firearms safety course and pass a background check.

The License to Carry (LTC) statute exempts license holders from the provisions of the ban against concealed carry in RSMo 571.030. There are other sections of law which restrict concealed carry or possession. The statute does not limit the type of weapon which can be concealed by licensees. One could carry a bowie knife in a boot, a pistol in a pocket, or a shotgun under a coat. As in any self-defense weapon, the more exotic the weapon, the more likely the licensee’s conduct will be examined. The law requires training with revolvers and semi-automatic pistols. This does not prevent the licensee from carrying one or two barreled deringers, although why one would want to remains a mystery. The law does not authorize possession of switchblades (see MISSOURI WEAPONS AND SELF-DEFENSE LAW page 20). While a collector or other authorized switchblade owner, or a licensed owner of an automatic weapon or sawed-off shotgun might carry such a weapon, this is not a good idea from a public relations standpoint, which is where many criminal cases begin. The prosecutor's association and at least one trial judge contends that the LTC law only allows carrying handguns. They are wrong. The law exempts license holders from the CCW provisions of RSMo 571.030. This means ALL weapons. The statute refers elsewhere to handguns, but the exemption is for "weapons". It is a basic rule of statutory interpretation that the defendant gets the benefit of the doubt.

A licensee may carry as many weapons as desired. This may be considered to be evidence of some enthusiasm for gunfights, by persons who file criminal charges and serve on juries. Many will claim that the second gun is a "throwdown" to justify a questionable shooting, even if never used as such. Use of a weapon easily traced to the owner through federal or state purchase

records will reduce the effect of this claim. Many police officers carry backup guns for the same reason as they carry spare tires; in case the primary gun is disabled. Due to weapon focus guns, are sometimes disabled by criminal gunfire. It has also been discovered that it is quicker for an individual to draw a second gun than to reload the primary gun. Drawing a second gun is refered to as a "New York reload". A backup gun also allows an individual to provide a weapon to a companion.

The use of magnum ammunition should be discouraged (but is not illegal) due to problems of over-penetration. The statute licenses the person, not a specific weapon. It does not limit the licensee to a specific weapon. One may carry any weapon, or as many weapons at the state of dress or degree of threat demands.

REQUIREMENTS
Applicants must appear at the sheriff's office in their county of residence, or a police station to which the county sheriff has delegated licensing responsibility. The statute uses the term "residence", not "domicile" or "primary residence" as often seen in Missouri statutes when a restrictive definition is sought. While one may have only one domicile or primary residence, some have multiple residences. However, RSMo 1.020 defines residence as where a person's family is, or where he or she "generally lodges". This would indicate that a part-time residence is not sufficient. Some persons separate in the context of a divorce. All too often this context requires self-defense considerations. Under *Nichols v Nichols* 538 S.W.2d 727 (Mo App. K.C. Dist 1976) a separation in contemplation of divorce is sufficient for a change of residence.

The applicant must bring with him or her:

1. Proof of training from a qualified instructor
------(This MUST have been done before filling out the application)
2. Valid Missouri state-issued identification or
-------Military identification and
-------Orders stationing the service member in Missouri
3. Up to $100 in check, cash or money order
-------Some sheriff's require money orders
-------The fee is not refundable under any circumstances
-------The amount of the fee depends on the sheriff's costs to administer the program

-------May require separate checks for
----------Fingerprints ($38) and
----------Costs

Some sheriffs may demand further proof of residency in the county such as voter's registration, personal property tax receipt, or utility bills. The statute does not demand it, but sheriffs might.

COURSE

Administrative
All instructors must be firearms safety instructors certified in one of five ways:

1. By the National Rifle Association holding a rating as a personal protection instructor or pistol marksmanship instructor
2. Certified in a firearms safety instructor's course offered by a local, state, or federal governmental agency
3. Certified as a firearms safety instructor approved by the Missouri Department of Public Safety
4. Completed a firearms safety instructor course given by or under the supervision of any state, county, municipal, or federal law enforcement agency
5. Is a certified police officer firearms safety instructor

The American Association of Certified Firearms Instructors (AACFI) has been certified by the Missouri Department of Public Safety to certify instructors for the Missouri LTC course. The ASCFI can be reached at PO Box 131254, St. Paul, Minnesota 55113 (612) 730-9895 www.aacfi.com. The AACFI provides a canned course of instruction covering the required subjects.

The NRA instructor does not have to be law enforcement qualified. Certified instructors have certificates stating their area of training. The NRA will provide names of current instructors; (703) 267-1000. The Missouri Field Representative for the NRA can be reached at (573) 761-5466. Certifications must be updated yearly.

There is no time frame for law enforcement training. Retired officers could use firearms safety training obtained before retirement. There is no blanket

license for retired officers. It is advisable that retired law enforcement officers and other who may have qualified years ago take a Missouri LTC class. This will fill in any changes in the law, and if the worst thing happens, demonstrate diligence in learning the rules of self-defense and safety.

The LTC course taken by the citizen must be approved by his or her county sheriff. The sheriff's authority to pass judgment on the course is open to question. However, under their statutory authority to make such investigation as they see fit, all Missouri sheriffs have taken the position that they must investigate the quality of LTC courses. Typically the instructor must provide:

1. A copy of the lesson plan
2. Copies of all certificates held by trainers
3. A copy of the certificate provided to students on completion of the course
4. Where records will be kept and available for inspection by the sheriff's office
5. Location of the classroom and range

There is no requirement that the sheriff approve the course outline. However, as a practical matter it may save trouble later if the area sheriffs provide written approval of the course outline, stating that persons passing the course are qualified to apply for the background investigation. Copies of this letter can be provided to graduates, who may be from other counties where the sheriff is not familiar with the persons giving the course.

Some sheriffs require a complete lesson plan, not just an outline. The Clay county Sheriff's office, for example, wants a lesson plan that anyone can pick up and teach from. Instructors are understandably reluctant to create a training program and then turn it over to outsiders. As a practical matter, the student should ensure that his sheriff has approved the training course he plans to take.

The National Rifle Association Personal Protection and Pistol Marksmanship courses do not exactly match the requirements of the LTC law. This requires additions to these NRA courses to cover the extra material. The resulting course is not an NRA course. The NRA prohibits the use of the NRA's name or the use of NRA titles such as "NRA Certified Instructor" unless a clear disclaimer is made stating that a course is not NRA-approved. This disclaimer must be the same size letters as the title.

Many students will want an NRA certificate for use in other states or other purposes. The solution is to provide the NRA course and NRA certificate, then the additional material required by law. The NRA and non-NRA material must be identified as such. Certificates for the entire LTC course can be obtained by approved instructors from the sheriff's office.

The National Rifle Association has insurance for instructors. At present teaching only the NRA course will qualify for the NRA insurance. The LTC specific requirements are not covered by the NRA insurance and a separate policy will be required for the entire LTC program, including the NRA portion. It appears that when two policies cover portions of the same course, the respective companies argue over which is responsible for any injury, forcing the instructor to obtain his own attorney, which defeats part of the purpose of insurance.

The NRA Endorsed Insurance Program can be reached at PO Box 410679, Kansas City, Missouri 64141-0679 (877) 487-5407. The AACFI has a program with Joseph Chiarello & Co Inc., 31 Parker Road, Elizabeth, New Jersey 07208-2118 (908) 352-4444 or (800) 526-2199. Policies for each individual instructor range from $300 to $450.

Some instructors have set up a business and operated under a business insurance policy. An independent insurance agent can advise on relevant policies.

There is a policy for individuals who may act in self-defense. It insures personal property or bodily injury resulting from an act of self-defense. It also covers legal defense in a civil suit, and reimburses the defendant for costs of a criminal defense, but only if acquitted or the charges are dropped. The policy is available only to NRA members through Lockton Risk Services, PO Box 410679 Kansas City, Missouri 64141 or (877) NRA-3006.

Instruction Requirements

There cannot be more than forty (40) students in a classroom portion of the course. There cannot be more than five (5) students per range officer engaged in range firing. It is not clear if all “range officers” must be certified instructors, or must only be supervised by a responsible certified instructor. However, the safe course of action would be to have all range officers certified as instructors.

Instructors must make the applicant’s course records available to the sheriff on request. Since some sheriffs may demand to see these records, a copy of the student's records should be given the student. Records on all students must be kept for at least four (4) years from the date of course completion. Knowingly giving the sheriff false information concerning an applicant’s performance in the live fire exercise or written test is a class C misdemeanor.

Course Requirements
The course does not have to be taken in the county where the applicant lives. It does not even have to be taken in Missouri. It is only required that the instructor be qualified and all topics be taught.

Instructors should require photo identification for all students to prevent applications by persons who feel themselves above actually taking the course.

The course must be at least eight (8) hours long. However, ALL topics specified in the statute must be adequately taught. Many experienced instructors believe that this can take up to ten hours. So long as the required topics are taught, sheriffs cannot demand a longer course. Required topics are:

1. Handgun safety in the classroom, home, firing range, and while carrying the firearm. This should include holsters with retention straps or the equivalent. The student should be taught how to draw a loaded firearm with the finger OFF the trigger to avoid premature discharge.
2. Physical demonstration by the applicant demonstrating ability to safely load and unload a revolver and a semiautomatic pistol. The applicant must demonstrate marksmanship with both. This could be in conjunction with the live fire exercise at number 9 below.
3. The basic principles of marksmanship. There are schools of “point” and “aimed” marksmanship with convincing arguments for each. The “point” technique teaches quick “instinctive” firing. Aimed marksmanship teaches sight alignment. This is the technique taught in the military and police academies. Legislators, judges, and sheriffs are familiar, if at all, with aimed techniques. This is probably what was intended. This is what should be taught.
4. The statute requires instruction on the “care and cleaning of concealable

firearms". There is no difference between cleaning concealable or non-concealable firearms. However, if the course syllabus does not use the statutory language, there may be a question, and thus a delay.
5. Safe storage of firearms at home. This can cover the various degrees of security offered by various storage devices.
6. Missouri's requirements for getting a license to carry.
7. The laws relating to firearms in chapter 571 of the Revised Statutes of Missouri. This involves the transfer of firearms, who can possess firearms, and what firearms are prohibited or restricted.
8. Laws relating to "justifiable use of force as prescribed in chapter 563, Revised Statutes of Missouri". This involves teaching the legal limits of self-defense.
9. A live fire "exercise" for each applicant to fire a handgun "from the standing position or its equivalent". This would appear to allow persons who cannot safely stand for extended periods to shoot from a sitting position. Applicants must shoot fifty (50) rounds, of any caliber, from any handgun, at a B-27 silhouette target "or an equivalent target". The target must be seven (7) yards away during this exercise. This is different from the live fire "test" at #10 below.
10. A live fire "test" with the certified instructor present of twenty (20) rounds from a standing position or its equivalent at a B-27 silhouette or equivalent target at a range of seven yards. The applicant must hit the silhouette portion with fifteen (15) of the twenty rounds. This is another indication of a difference between certified instructors and range officers.

It is not required; however, a portion of the course should cover manners. It is considered very bad manners to "flash" or display a concealed firearm. It is not illegal for a concealed firearm to be exposed. In the course of reaching for wallets and cell phones, a certain amount of display is inevitable. If this display is unintended it does not violate the open carry bans of certain cities (see MISSOURI WEAPONS AND SELF-DEFENSE LAW at 115). It must be remembered that a number of people feel threatened by the mere presence of a firearm; sometimes by the mere thought of a firearm. During a radio debate on this law, the prohibitionist accused me a brandishing a firearm to intimidate those present. I did not have a firearm, and asked the media representatives present to vouch for this. They refused to do so (which teaches us several lessons). These people vote on gun issues, and influence other persons to vote. They also call the police with claims of brandishing and disturbing the peace. Neither course is good for license holders as a group. Complaints will be used against license holders on this and other

firearms issues. The best way to stay out of trouble is to exhibit excruciatingly polite behavior, and to tolerate boorish behavior from others. Good manners will keep you out of trouble better than a Philadelphia lawyer can get you out.

Passing the Course
The statute defines only what constitutes failing the course, which consists of:

1. Does not follow the orders of the instructor or range officer. This determination is completely within the discretion of the instructor. This also differentiates between instructors and range officers, indicating that range officers do not necessarily have to be instructors. However, it would be best if they were qualified instructors.
2. Handles a firearm in what the instructor believes is an unsafe manner. This is completely within the discretion of the instructor.
3. Fails to hit the silhouette portion of the target with at least 15 out of 20 rounds.

No written test is required. A written test should be used to demonstrate that the students were taught the required subjects and knew them when they left.

The statute requires an “affidavit” that the applicant passed the course. Giving a false statement to the sheriff is a misdemeanor.

It is not necessary or especially wise to keep more detailed records. Data showing that a student scored fifteen out of twenty shots and therefore "barely" qualified or scored twenty of twenty shots and therefore was a "deadly shot" can only be used against the licensee. Records showing that the student was "qualified" are sufficient.

There has been some speculation that the NRA training counselors may place "ringers" in an instructor's courses to ensure that standards are met. This is probably not necessary. The students themselves are quick to complain when they are shortchanged. The Cincinnati Enquirer for 9 April, 2004 reports that an instructor for the Ohio law cut corners in his course. After complaints by students, he was arrested. A Kansas City TV station conducted an "expose'" of a local LTC course. The students report that the instruction was satisfactory and covered all required materials. The "expose'" as broadcast revealed that the eight hour course required by statute

did not spend as much time on a subject as a sixteen hour course offered by the police academy. They were surprised that there is more time in sixteen hours than in eight hours.

Qualified instructors from the gun community are the gatekeepers for license applicants. During the course of instruction there will be opportunities to observe behavior and listen to comments. This is the place to weed out those few who might ruin things for the rest.

LICENSE

Qualifications

The license applicant must be at least 23 years of age. The applicant must have be a resident of Missouri. The statute does not require that Missouri be the applicant's only residence, or even permanent residence. As soon as one establishes residency, one is eligible. The applicant can also be in the military or the spouse of a military member who is on orders to be stationed in Missouri. There are some persons stationed at Ft. Leavenworth, Kansas who reside in Missouri. These individuals will have to establish residence before application.

The applicant must have a clean criminal record with no felonies of any kind no matter how long ago. He or she cannot have been convicted of a misdemeanor which prohibits the purchase of firearms in Missouri, or a misdemeanor crime of violence in the last five (5) years. Domestic violence is certainly a crime of violence, and as a practical matter, persons with such convictions are forever barred by federal law from possessing a firearm. The applicant cannot have been convicted of two (2) driving while intoxicated charges in the last five (5) years. The statute says driving while intoxicated, not the lesser charge of driving under the influence often used in cases of drug intoxication or when the blood alcohol level cannot be determined. The applicant cannot have been convicted of possessing a controlled substance (they mean drugs) in the last five (5) years. The applicant cannot be charged with any of the above offenses at the time of application.

The applicant cannot have been dishonorably discharged from the military. There are several less than honorable discharges in the military, but only a dishonorable discharge disqualifies the applicant. See the "Prohibited Persons" section at page 79 in MISSOURI WEAPONS AND SELF-DEFENSE LAW.

The statute also prohibits applications by persons adjudged mentally incompetent or committed to a mental health facility in this or any other state. The adjudication or commitment must have been following a hearing at which the defendant was represented by counsel or a representative. The statutes uses the language “or for five years prior to application”. This may indicate that the applicant must have been restored to sanity more than five years prior to application, in any case, it certainly should. As a practical matter, such persons are prohibited under state and federal law from receiving firearms or ammunition.

There is also a provision barring persons who have “engaged in a pattern of behavior, documented in public records, that causes the sheriff to have a reasonable belief that the applicant presents a danger to himself or others". This is the “naked man” provision. A person in the habit of getting naked and howling at the moon may not be dangerous, but may raise questions. A series of restraining orders, transportation for psychiatric observation, or a number of charges for disturbing the peace may raise questions. Anyone exceptionally eccentric or irresponsible can be barred.

Procedure
The applicant must demonstrate knowledge of firearms safety training. This is done in one of six (6) ways:

1. Statutory Firearms safety course
2. Law enforcement firearms safety course given by or under the supervision of any state, county, municipal or federal law enforcement agency.
3. Be a firearms safety instructor certified by the National Rifle Association or the American Association of Certified Firearms Instructors.
4. Currently a Law Enforcement Officer (LEO) under Missouri Revised Statutes Chapter 590
5. Currently a probation or parole officer
6. Currently a certified corrections officer by taking an eight (8) hour certification course under RSMo 217.105 and justifiable use of force training covering Missouri Revised Statutes Chapter 563

This does not specifically approve military service with the possible exception of military law enforcement.

After demonstrating knowledge of firearms safety, the applicant takes a copy of his course affidavit to the county sheriff. The City of St. Louis is not part of any county, is not part of St. Louis County, and has its own sheriff; it doesn't have to make sense, it’s just the law. The applicant will give the sheriff a sworn statement providing identifying information and that he or she is qualified. The sheriff cannot add requirements to those set forth in the statute. The sheriff will take a copy of the safety certificate, a non-refundable filing fee, take the fingerprints of the applicant and run the applicant through state and federal databases.

The Missouri Supreme Court issued two opinions on the LTC law. The first ruled that the sheriff couldn't charge more than his actual costs of issuing the license. After a demand for reconsideration of the constitutionality of the law, the Court issued the same decision except that it ruled that as no one had complained about the amounts the sheriff charged, therefore it was not ripe for a ruling by the Court. This means that sheriffs can charge up to $100, at least until someone complains. In order to complain the plaintiff must have paid a fee in excess of the sheriff's actual costs. It was intended that the sheriffs profit from this program; but this is America, someone will complain.

Missouri sheriffs have three unfunded mandate record programs. One is the "Racial Profiling database under RSMo 590.650. This requires that records be kept of the racial group of persons stopped for traffic violations, along with information regarding the reason for the stop. Sheriffs must also keep records and take fingerprints of sex offenders living in or coming into their counties under RSMo 589.400. These records may be deemed a public service but sheriffs are not paid the administrative costs of the program, in violation of the Hancock Amendment to the Missouri Constitution. The Missouri Supreme Court has ruled that the License to Carry program is also an unfunded mandate. A sheriff could place these duties in a special section as they all involve data processing and taking fingerprints in two of the programs. He could then bill the state for the costs of this section. Since this section is separate from other law enforcement duties, the state would have very little room for argument over the bill, but one must expect that it will.

The sheriff has three working days to submit the fingerprints to the FBI. Forty-five calendar days later, if there is no adverse report, he must issue a certificate authorizing the applicant to carry a concealed weapon. The sheriff must issue the certificate within three working days of receiving a favorable

report. The applicant must take the certificate to the Department of Revenue Drivers License Bureau within seven (7) days. The Department will place an LTC endorsement on the Licensee's driver's license or state identification card. It is not clear if the sheriff's certificate is effective as a license between the time the applicant receives the certificate and the time he or she receives the license. Since the license is only a convenient memorial of the sheriff's certificate it would not appear to be illegal to carry concealed on the way from the courthouse parking lot to the Department of Revenue. However, it is not wise to take chances after coming so far.

Due to the federal “Real ID” act the applicant must bring certain original documents to the Driver’s License Bureau:

1. Proof of lawful residency
    a. Original birth certificate
    b. Original passport
    c. Original certificate of naturalization
2. Proof of ID
   Original social security card
3. Proof of residency in the county
   Must contain a street address, not a post office box. These include:
    a. Voter ID card
    b. Government checks
    c. Paychecks
    d. Bank statements
    e. Utility bills
    f. Mortgage or lease
    g. Official letter of some sort.

The sheriff will post the applicant’s license on the Missouri Uniform Law Enforcement System (MULES). This provides the information to all Missouri Law Enforcement agencies. It is a Class A misdemeanor to reveal the applicant’s information to persons outside the MULES system.

Some have demanded to know who has licenses; exactly what they intend to do with this information is not stated. When Ohio passed its License to Carry law the lists of license holders was available only to newspapers. The Cleveland Plain Dealer announced on 8 January, 2004 that it would publish the list of license holders. Again, there was no indication of what people can do with this information. The Fort Wayne News-Sentinel considered posting

a list of license holders, but announced on 24 March, 2004 that it would not. They did not base this on any privacy consideration, but on the grounds that a woman had gone to great lengths to hide from her abusive ex-husband. She used false names and addresses in all public records. However she was required to use her own name and home address for her license to carry. It is unknown how many obsessive stalkers would use such a list, but it is certainly too many. In the discussion over wording Missouri's law, this provision was considered to be a privacy matter. There have been enough problems with identity theft; we do not need to provide a target population. Secondly, the law also allows citizens to bring Small Claims Court actions to revoke licenses. From past experience with prohibitionists there is a real danger that harassing actions would be filed based on such a list.

The Department of Revenue will place a license to carry endorsement on the applicant's driver's license or non-driver's license. Since driver's licenses last for six years, and carry licenses for three, it may be more convenient to obtain a non-driver's license with the carry endorsement. This also precludes the potential problem of "flashing" an LTC endorsement when paying by check or otherwise showing identification. Police have other access to lists of licensed persons. There is no provision to remind license holders when their license expires.

The license is valid throughout the state. Local government may restrict open carry, but not concealed carry by license holders.

Reciprocity
Missouri, under the LTC law, must recognize carry licenses issued by other states; just as it recognizes driver’s licenses. The respected web site www.Handgunlaw.US has researched the statutes of other states and found that Missouri’s license will be recognized in 35 states (as of September, 2008) See the web site for specific states and specific rules for those states. Alaska and Vermont do not require any license to carry concealed weapons (although Alaska has a licensing system for Alaskans who visit the lower 48). The reciprocity and unique rules of these states should be checked before traveling through them as these things may change.

Any licensee who is anywhere near a state line should stop, unload the gun, and lock it up. It would be awkward to become lost, and be arrested while asking a policeman for directions back to Missouri. Under 18 US Code section 926A, a person can carry a gun in any state if it is unloaded and in a

locked container. The glove compartment and console do not qualify even if they are locked. It doesn't have to make sense, it's just the law.

Missouri will recognize any license issued by any other state. Subsection 20 of the License to Carry law states: "A concealed carry endorsement issued pursuant to this section or a concealed carry endorsement or permit issued by another state or political subdivision of another state shall authorize the person in whose name the permit or endorsement is issued to carry concealed firearms on or about his or her person or vehicle throughout the state". Since some states do not require residency to issue licenses, a number of Missouri residents and adjoining states already have licenses or can get licenses. These licenses are valid even if issued to persons below the 23 year old age limit of the Missouri law. These licenses are valid even if the issuing state does not recognize Missouri licenses.

Some states issue licenses to out of state residents only if the other state does not issue its own licenses. Pennsylvania licenses became popular in Missouri after the lawsuit was filed to enjoin issuing our own licenses. Pennsylvania requires a copy of the home state license to carry if the home state issues licenses. After unknown thousands of such licenses were issued, Pennsylvania recognized Missouri as an issuing state and stopped issuing licenses. This had no effect on licenses which had already been issued. An 8 April, 2004 letter from the Pennsylvania Attorney General's Office states: "a concealed carry permit issued by a Pennsylvania sheriff is good for a period of 5 years, unless revoked at an earlier time by the sheriff. Permits are not automatically revoked under any circumstances." This letter is posted at www.WMSA.net.

Out of state license holders are subject to the restrictions of Missouri law regarding banned areas and self-defense. It is advisable to take a Missouri specific course before carrying on an out of state license.

Changes

The license holder must notify the sheriff if he moves. If he moves to a different county, he must notify the sheriff of both the old and the new county. If a license holder changes his or her name, he or she must notify the sheriff. The license holder must also notify the sheriff if the license is lost or destroyed, even if the license holder does not intend to ever use the license. The license becomes invalid within thirty (30) days if the sheriff is not notified. The best course of action is to provide written notification, sent

certified with return receipt, and a copy of the letter should be kept in a safe place.

Renewal
There is no procedure to notify license holders before their licenses expire. There is no specific time frame in which to apply for renewal; although there is a penalty for late renewal. Only an application and a $50 renewal fee are required. No fingerprints or investigation are required. Given that the applicant's license would have been revoked if the applicant had committed a crime or been committed while licensed, no investigation would appear to be necessary. The same application form used in the original application will be used for renewals.

Contact With Law Enforcement
A license holder is required to display his or her permit if asked by any law enforcement officer under any circumstances. In effect, if the officer asks if you have a license, you must display it. This information is available to the officer through the MULES and Department of Revenue systems, so there is no point in being evasive.

Places Cannot Carry
License holders are prohibited from carrying in government, quasi-government, heavily regulated business, certain gatherings of people, or where especially vulnerable persons are found. The specific banned areas are:

Place----------Management Authorized
Law Enforcement office----------possible
w/in 25 ft of polling place------no
Adult or juvenile prison---------no
Courthouse or court offices------no
Government meeting----------only officials
Government Bld (posted)----------no
Bars----------possible
Airport controlled area----------no
Banned by Federal Law----------no
Post Office----------no
Any school or college----------possible
Child Care Facility----------possible
Riverboat Gambling----------possible

Amusement Park----------no
Church or similar----------possible
Posted property----------possible
Sports arena/stadium----------no
Hospital----------no
Bus Terminal----------no
Bus----------no
Train----------no

The LTC law only exempts licensees from the provisions of RSMo 571.030, which criminalizes carrying concealed weapons. It has no effect on other statutes (such as relate to buses and bus terminals) or federal statutes. Weapons cannot be taken into bus terminals or buses under RSMo 578.305 or 578.320; see page 115 of MISSOURI WEAPONS AND SELF-DEFENSE LAW. The use of “terminal” does not extend the ban to bus stops, but this is of little use; one cannot get onto the bus, any bus, with a weapon. Weapons cannot be taken into federal facilities under 18 U.S. Code section 930; this includes post offices. The term "facility" does not appear to include parking lots.

The language of the federal statute bans firearms in federal facilities except when "incident to hunting or other lawful purpose". Some have argued that self-defense is a "lawful purpose" under the federal statute. This is an excellent point; however federal and especially postal authorities disagree. Anyone seeking to make a test case needs to get a 55-gallon drum. Stuff this drum with hundred dollar bills; cram them in as tightly as possible. Wheel the drum into my office, and then we can talk about it. Of course, flunking a test case means going to prison.

The (federal) National Park Service prohibits carrying firearms in its parks. The National Park Service is considering a reform of this policy but it has not occurred as of this writing. It is legal to carry in Missouri state parks if one has a LTC. The USDA Forest Service, on the other hand, respects the concealed carry laws of the states in which the forests are located. It doesn't have to make sense; it's your tax dollars at work.

Under federal law, trains follow the same general procedures as air travel; see Missouri Weapons and Self-Defense Law page 120. The few light rail systems in Missouri intend to ban license holders from carrying concealed weapons.

The prohibited places portion of the statute only prohibits carrying concealed “firearms”. Carrying other types of weapons is not specifically prohibited by this statute, but may be prohibited by other areas of the law (buses and post offices for example). The individual may also be charged with tresspass. See the “Prohibited Places” section in MISSOURI WEAPONS AND SELF-DEFENSE LAW.

Carrying a concealed weapon is legal in the parking lots of the above places so long as it is not removed from the vehicle or brandished while the vehicle is on the premises. The only exception is for places banned by federal law.

Carrying a weapon of any kind into a government building, office, or facility is already illegal. This does not change. The law makes it an infraction for license holders. The General Assembly and the courts may issue rules concerning carrying concealed weapons in their buildings, but cannot make it a crime. During meetings of the General Assembly or local government, members of that governing body who are part of the meeting and only those members may carry concealed weapons if licensed. Governor Holden has, by decree, banned license holders from bringing weapons into state buildings. His authority to do so under the statute, however, is questionable. Anyone seeking to make a test case of this issue needs to get a 55-gallon drum.

For one hundred and twenty-five years only criminals carried weapons into city buildings. The moment honest citizens gained the right to carry concealed Kansas City's Mayor Pro Tem Alvin Brooks warned of "kooks". Councilwoman Saundra McFadden-Weaver declared that she would not come to work until the city acquired metal detectors ["KC bans firearms from city buildings" Kansas City Star 5 March, 2004 page B-1 clmn 6]. The city has banned concealed weapons from all city-owned buildings and vehicles. If that works they may ban potholes. Most cities seem to have passed similar ordinances.

As of this writing, several cities are trying to stretch this provision into a ban on licensed carry in city parks. This stretches the term “building” which means “inside” to also mean “outside”. If this was the intent of the law, the city could also ban licensed carry on streets and sidewalks; this was not the intent of the law.

Some cities have suggested bans on licensed carry in public zoos. This is not specifically allowed by the law, but arguably could be considered an “amusement park”. Thus a city might ban licensed concealed carry; if that works it might then ban illegal concealed carry. At a town meeting on the bill a representative of Worlds of Fun Amusement Park quoted a portion of the bill, and asked if that meant they could post their parking lots as well. The prosecutor said that it did. However, the representative was quoting from an early version of the bill. The final version stated that it did not apply to parking lots, only to "gated areas" However, (again) a property owner can set his own rules for any property he owns.

Licensees cannot carry into bars. This does not apply to the owner of the bar, and prior law allows persons who have “dominion or control” over the premises to carry concealed. This provision also does not apply to restaurants with dining facilities for at least fifty (50) persons and also receives at least 51% of its gross annual income from the dining facilities by the sale of food. The statute does not indicate how one might know this without first entering the premises and auditing the books.

There are street fairs where alcohol is served. The statute does not bar entry to such street fairs. The statute refers to "establishment" which is defined by the alcohol license granted to the booth selling alcohol. As long as the license holder doesn't "belly up to the bar", it will not be an infraction. It is a felony to carry a weapon when intoxicated, and a misdemeanor to carry an unloaded firearm when intoxicated.

Any private business may post itself off limits to concealed firearms by conspicuous display of an eleven (11) by fourteen (14) inch sign with letters thereon of not less than one inch. The statute does not specify what the sign must say, but “No Guns” or “Off Limits to Guns” would seem to get the message across. Private property owners have a perfect right to set conditions for their customers, just as they declare “No Shirt, No Shoes, No Service”. In other states these signs were common after passage of a license to carry law; gun owners avoided such places, criminals did not. The signs then began to come down. As a matter of good manners, gun owners shall spend their money elsewhere and with excruciating politeness inform the store of their decision. Cards to this effect can be obtained from www.LearnToCarry.com. Copies of these "No Guns No Money" cards can be printed out using samples at any Kinkos.

In many areas local government has supplied free "No Guns" signs. They have refused, however, to supply "Guns Welcome" signs. This contributes to the general hysteria over implementation of the law, which may be the purpose of the exercise.

In some states business owners posted non-conforming signs, which were therefore of no legal effect. This gave the business the advantage of satisfying the hoplophobes (persons with an unnatural fear of weapons), and not offending the gun owners. Since the Missouri law is not specific in language, only its size can make it non-conforming. There is some question about the decals of a revolver with a red slash through them. Assuming the size of the decal is correct; the argument is that there are no "letters" to be at least one inch high. It may also be argued that letters are only symbols representing a sound. The ban symbol represents an idea. It stretches the idea of "letters" but it is not worth buying a 55-gallon drum over.

Many businesses post these signs in the belief that it will reduce their liability. The contrary is more likely. Denying customers the right to carry the implements of self-defense is akin to the captain of the Titanic refusing to allow passengers to bring aboard their own lifeboats. To do so forces the passengers to rely on the captain's ability to avoid icebergs. When a business forces the customer to rely on the business's security, the business becomes the guarantor of the customer's safety. Parking lots which take the customer's keys and park the car guarantee the security of the car by doing so. Parking lots where customers park their own cars and take the keys do not. When a business takes exclusive charge of security, it takes exclusive liability for a lack of security. If the business takes no action, there will be no change in liability for security.

Licensees cannot carry in any sports arena or stadium with a seating capacity of 5,000 or more. The critical question is capacity, not how many show up for the game.

Licensees cannot carry in any hospital accessible by the public. It is a rare hospital which is not accessible by the public. There are areas of hospitals which are accessible by the public, and areas which are not. This may, therefore, not apply to employees of hospitals in those non-public areas, but this is not clear. Since other barred areas allow for permission by the management, and the hospital provision does not, a more restrictive interpretation might be made.

It has been widely claimed that it is no longer a felony to carry weapons into schools. This is not entirely true, in the sense that there is absolutely nothing true about it. It remains a felony under federal and state law to bring a weapon to any school function, on or off school grounds. The only exception is for license holders for whom it is an infraction and probably a trespass charge. The definition of school includes colleges which may own theaters, halls, or other facilities not necessarily part of the school. The statute actually bans license holders from carrying firearms in any "school facility"; this would appear to include a host of facilities including the school's sewage plant. Under 18 U.S.C. section 922q(2)(B) holders of licenses issued by a state are exempt from the federal "Gun Free School Zone Act". In a 17 April, 2002 letter, the Bureau of Alcohol Tobacco and Firearms has taken the position that this exemption only applies in the same state in which the license is issued. Their reasoning does not seem compelling, and a court might rule otherwise, or might not.

Employers may be more restrictive than state law. They may, for example, ban the possession of firearms anywhere on company property, including the parking lot. It will not be illegal to violate company policy, but it may get a licensee fired. Missouri is an employment at will state, the will largely being that of the employer. The boss can fire all gun owners in the company and get away with it, at least until the picket line starts.

Certain librarians have claimed that under the LTC law, they have more authority to eject gum chewers than pistol licensees. One would expect a librarian to read the law more carefully. Under RSMo 571.107.1(15) private property owners "or any other organization, entity, or person" may prevent license holders from carrying on premises owned by the entity. If libraries are not government buildings, they are certainly entities.

Penalties

In other states with similar laws nearly all "crimes" committed by license holders involved inattentively entering prohibited places with a weapon. In drafting Missouri's statute it was decided to remove these places from the list of crimes. Entering one of the above areas with a concealed weapon is not a crime. It is an infraction. However, it is not even an infraction unless the licensee is asked to leave the premises, refuses to leave, and a peace officer is summoned. The licensee may then be issued a summons carrying a $100 fine. If a second citation for a similar violation occurs within six (6) months,

the fine will be $200 and his or her license to carry shall be suspended for one year. A third citation for a similar violation within one year of the first citation carries a fine of $500 and the license to carry shall be revoked. The person cannot re-apply for a license for three years. The licensee may also be arrested and charged with trespass. Some prosecutors have an unseemly desire to put licensees in jail, even briefly.

Missouri has struggled too long to get this law, to endanger it with stubborn, boorish behavior. Robert Heinlein wrote that an armed society is a polite society. This is our best defense.

NICS

The National Instant Check System (see page 98) provides a benefit for licensees in most other states, but not Missouri. Under 18 U.S.C. section 922(t)(3)(A) a license holder is exempt from the need for NICS checks when buying a firearm, having been more extensively checked for his or her license. There is even a block on the 4473 form filled out by federally licensed dealers for details regarding the buyer's carry license as an alternative to the NICS check. However, (the eternal however) this only applies to states where the issuing authority can determine that possession of a firearm by the licensee would not be in violation of law. The Missouri LTC law demands a background check. However, (again) the BATF says that Missouri's law does not specifically exempt license holders from NICS. They have told Minnesota dealers that Minnesota carry license holders are not exempt from NICS because their law does not mention persons convicted of adult abuse. This appears to be two radically different reasons for the same result. This also does not appear to be what the federal statute says. This will require further attention.

Under RSMo 630.140.5 all records of any proceeding under RSMo Chapter 632 will be available to the Missouri state highway patrol for reporting to the National Instant Criminal Background Check System (NICS). This gives these agencies access to reports of persons who have been committed for reasons of mental incompetence.

ADDITIONAL CHANGES

As of 28 August, 2007 it will be illegal for the state of local government to confiscate legally owned and used firearms during an emergency. This is a reaction to the seizure of guns from citizens of New Orleans during the

Katrina emergency.

As of 28 August, 2007 it will no longer be required to get a Permit To Acquire (PTA) from the sheriff before buying a handgun. The federal NICS check is all that is required. For private sales it may be advisable to transfer it through an FFL.

As of 28 August, 2007 Missouri has a pure "Castle Doctrine" under RSMo 563.011 and 563.031. If an intruder is found in one's home the homeowner is entitled to believe that the intruder does not have his best interests at heart and can use force. If a person refuses to leave when told to, the license to remain is revoked and this may be considered unlawful entry. Under the applicable Missouri Approved Jury Instructions—Criminal 306.11 lethal force is allowed under the Castle Doctrine if “unlawful force” is threatened. The term “unlawful force” is not defined. It does not appear in the statute and seems to be an addition by the jury instructions committee. It does not say “deadly force” and therefore must mean a lesser threat. A "home" is broadly defined to specifically include tents and other temporary residences. It also includes vehicles.

The same bill which provides for License to Carry makes other changes in who can carry concealed and where anyone can carry. Courts have made other changes.

RANGE PROTECTION at page 14
Under RSMo537.294 all owners and users of any firearm range are “immune” from any criminal or civil liability arising out of the noise resulting from the use of the range. The statute further voids any judgment for money damages or injunction limiting the use of a range.

Under the same statute owners and “authorized users” of hunting preserves are immune from criminal or civil liability arising out of the noise emitted from such a hunting preserve. Owners and authorized users are not subject to “any action” for public or private nuisance or trespass and cannot be enjoined from operation due to noise. The statute specifically does NOT limit liability for injury to persons or property.

Under RSMo 537.355 an owner of land who invites or permits without charge the use of the property for hunting or fishing or other recreational purpose is not responsible for injuries to persons or property. The only

possible liability is the failure to use “ordinary care”. The definition of “ordinary care is found in the Missouri Approved Jury Instructions 11.05; “The phrase ’ordinary care’ as used in this instruction means that degree of care that an ordinarily careful person would use under the same or similar circumstances.” This would, at most, involve warnings about known dangers and not setting fire to a forest containing hunters.

Shortly after this law was passed, the Missouri Supreme Court ruled on *State ex re. Young v. Wood* SC8880 10 June, 2008. The Youngs had given Mr. Hartnagel and Shaw permission to hunt wild turkeys on their property. They did not warn either man that other hunters were on the premises. Mr. Hartnagel thought that he heard a turkey and fired at the sound. The source of the noise was Mr. Shaw who died of his injuries. The Court ruled that under the Recreational Use Act, RSMo 537.347, if access is granted without charge, the owner is immune from suit.

Taken together landowners may gratuitously allow their land to be used for hunting without fear of losing the land in a lawsuit.

SILENCERS page 16

Silencers are now legal to possess if all federal requirements are followed; RSMo 571.020.

EXPLOSIVES page 16

Possession of an explosive weapon is prohibited by any person convicted of a dangerous felony, found incompetent, a fugitive from justice or habitually in an intoxicated or drugged condition. The definition of “explosive weapon” has been expanded under 571.010(3)(6) and (7) to include anything that goes boom. This does not appear to include gunpowder unless the gunpowder is part of a pipe bomb or something similar.

TASER STUN GUNS at page 64
Taser anounces that Tasers are illegal in the District of Columbia, Massachusetts, Rhode Island, New York, New Jersey, Wisconsin, Michigan, Hawaii, and "certain cities and counties." There are "restrictions" in Connecticut; see www.taser.com. This may be due to hysteria over persons who died after being shocked with tasers. These incidents are more likely to be attributed to drugs or psychosis. There are fifty five thousand (55,000)

uses of taser on people who otherwise would have been shot. About 75 to 100 died afterwards. There are eight known autopsies which "could not rule out" the taser as the cause of death see Ayoob "Taser" Shotgun News 3 October, 2005 at 45.

CONSTITUTIONAL BASIS page 67

A GREAT DAY FOR LIBERTY
DISTRICT OF COLUMBIA VS HELLER

On 26 June, 2008 the U.S. Supreme Court ruled that the right to “keep and bear arms” is an individual right, and struck down the Washington D.C. laws which prohibit owning handguns and require that rifles and shotguns be unloaded, disassembled and locked up. Only the Washington D.C. laws are struck down. The vote was 5 to 4 which means that it is the opinion of the Court. When congress passes a law by a 5 to 4 margin it is just as much the law as if it was unanimous. It is the same with a Supreme Court decision.

What Does It Mean?

Reciting the Court’s ruling is simple. Explaining what it means is hard. A few days after the opinion there are already a variety of explanations. The Court reviewed the legal basis of weapons ownership from over a century before the Bill of Rights and at the time of the Bill of Rights. The opinion discusses legal commentary on the Second Amendment immediately after the Bill of Rights and for two hundred years thereafter. The dissenting opinions mock this as using history after the fact as evidence of legislative intent at the time of enactment. Actually the Court is responding to anticipated claims, as demonstrated by the dissenting opinions, that the decision is unsupported and a vast departure from prior decisions. The dissents claim that the 1939 case of U.S. v Miller tells us everything that we need to know about the Second Amendment. The ruling of that case was that the Court could not take judicial notice that a sawed-off shotgun was proper militia equipment. This limited ruling was the product of a poorly briefed case in which the defense was not represented. It has been widely criticized as being of limited use. Many courts, however, have cited the case for propositions never mentioned in the decision. These “hundreds” of cases are cited by the dissent as grounds for upholding the rulings these courts and the dissent imagine it contains. If “hundreds” of judges used a vague reference to Miller as a substitute for legal reasoning in unrelated matters, that is

compelling reason to clarify Miller.
The Court bases its ruling on the right of self-defense. It is obvious that without the means of self-defense, the right becomes a cruel joke. The dissents mock this basis as unrelated to the militia. Actually, the classic militia was primarily a local defense force. Often these forces were improvised affairs and indistinct from a posse or vigilante groups. Firearms were accepted for the purpose of self-defense and colonial laws ordered persons venturing beyond the community to carry guns on the trip. These laws clearly envisioned individual self-defense. The dissents ignore this history in favor of speculation that Washington D.C.'s murder rate would be even worse without the handgun ban. The dissents accept without question the patently false claim that murderers frequently have no criminal record and thus the law paternally prevents the average citizen from committing mass murder.
The decision specifically protects handguns as a class of firearms. It specifically recognizes the utility of handguns in self-defense. They can be used by the infirm and while using a phone or flashlight in the other hand. The decision strikes down the District law which prohibits keeping long guns available for self-defense. However, it is a trifle vague as to what classes of guns are protected by the statute.
The decision also is vague as to the standard of review to be used in Second Amendment Cases. There are three basic Constitutional standards of review; the balancing test, the rational basis test, and strict scrutiny. Few civil rights claims survive the first two levels of scrutiny, but few laws survive the strict scrutiny level. The decision finds that "Under any of the standards of scrutiny . . . banning from the home the most preferred firearm in the nation to keep and use for protection of one's home and family, . . . would fail constitutional muster." It finds that Second Amendment cases should be based on a level of scrutiny above the rational basis test but does not find that it must be decided under strict scrutiny or some new intermediate level between the two.
The ruling also does not mention if it must be enforced against the states. Only the laws of a federal enclave were in question, so the Court did not have the opportunity to issue a decision on this point. As soon as the ruling came out, five similar cases were filed against cities, and these cases will begin working their way up the chain of appeals to address this question.

What Next?

The "Brady Campaign" declares that the decision takes away our "slippery

slope" argument, that any restrictions on guns will result in a total ban. They declare that the decision allows "reasonable" restrictions, or what they call reasonable. The decision contains dicta that laws regarding certain classes of guns, concealed guns and "gun free zones" are constitutional. However, dicta is simply comments of the Court not essential to the Court's ruling. Dicta is not binding on lower courts but may offer guidance. These comments may have been necessary to obtain that fifth vote in favor of the decision. Regardless, the "Brady Campaign" is raising money to promote new restrictions.

There can be no question; we won. The victory is not as complete as we would like, but it unmistakably establishes the foundation for future victories. The self-defense basis of the decision will make it valuable in future battles.

These future battles will not be easily won. The Court opined that handgun licensing requirements would be Constitutional so long as the District administered licensing in a fair manner. It seems that the District is constitutionally incapable of administering licensing in a fair manner. It has already declared that licenses would be as restrictive as possible. There will be more cases. The next president will appoint a number of judges, and probably one or more Supreme Court justices. All the opposition has to do is frighten one more Supreme Court justice and we can lose the next case. But, we won. But, we did not win everything.

After defeating the nazis in North Africa Winston Churchill said, "A bright gleam has caught the helmets of our soldiers and warmed and cheered all our hearts. . . . This is not the end, this is not even the beginning of the end, but it is perhaps the end of the beginning."

But, we won.

PROHIBITED PERSONS CONVICTED

In 2008 RSMo 571.070 was amended to prohibit knowing possession of any firearm (including muzzleloaders) by any person who has been convicted of any felony in any state or the federal system. This creates a problem. It is not clear if this law applies to persons whose rights to own guns were restored by the BATF. The restoration program has not been funded for a very long time and this was not considered when the statute was proposed.

However, now convicted felons can no longer possess muzzle-loading firearms. Previous law prohibited possession of concealable weapons for

five years after release from the Department of Corrections. Then the legislature changed RSMo 571.070 to prohibit possession of any firearm. The definitions section of the firearms chapter includes muzzle-loaders but subtle changes removed the exception for possession of a muzzle-loader from the statute. On the surface this new statute only appeared to repeat federal law. At the time it was passed we were concentrating on range protection and we missed it. I missed it. The anti-gun faction hates us so much they will prohibit a small part of the shooting community from possessing an inoffensive type of firearm. This will remove only a small part of our community. However, we hate to lose even wayward members of our family.

Municipal Court

All municipal court convictions are misdemeanors. All misdemeanors involving firearms, silencers and (poison) gas guns permanently bar the individual from buying handguns in Missouri. However, the statute only bars state court convictions. Municipal court convictions are not state convictions, they are convictions under city ordinances. I have had some success arguing this distinction in circuit courts to overturn Permit To Acquire denials. However there is no appellate court decision as yet.

Foreign Convictions

On 26 April, 2005 the U.S. Supreme Court ruled on SMALL v UNITED STATES. Gary Sherwood Small was arrested in Japan for attempting to smuggle firearms and ammunition into Japan. Mr. Small did not have meaningful access to counsel either before or during trial. Mr. Small spoke no Japanese. His lawyer spoke little English and his consultation was limited to urging a guilty plea. A translator was provided but Mr. Small did not have meaningful access to him during the trial. After four or five days of trial, spread over thirteen months Mr. Small was convicted and served five years in prison. On his return to the United States Mr. Small purchased a handgun from a dealer. He filled out the required BATF form 4473 which asks, among other disqualifying questions, if he had ever been convicted of a crime punishable by more than a year in prison. Mr. Small answered "no" and was subsequently arrested for being a felon in possession of firearms under 18 U.S. Code Section 922(g) and making a false statement to a firearms dealer under Section 922(g)(6). He was convicted, and the conviction was upheld by the Third Circuit Court of Appeals. There was evidence from Amnesty International, the United States Department of State and the Japanese Federation of Bar Associations that Mr. Small's trial was

typical of the Japanese system.

The Court appears to have been concerned about the lack of due process of law in Mr. Small's case, and that actions which are crimes in foreign countries are not crimes in the United States. It is possible, but unlikely, that this decision will apply to immigrants. American immigration law makes it unlikely that aliens with criminal records will be given visas for the United States. In twenty-one years of practicing immigration law I have had only one client with a foreign conviction (other than asylum cases). The individual had an old British conviction for the sale of what might be called "ordinary" pornography, the sort that is no longer a crime in the United States or Britain. After proving the nature of the old crime, he received residency based on marriage to an American citizen. It remains a crime for illegal aliens to possess firearms, or for alien students or visitors to possess firearms. it is not against the law for aliens to possess large aircraft.

MENTAL DISEASE OR DEFECT

Federal law under 18 U.S. Code section 922(g) and (h) forbids firearm or ammunition sales to or ownership by persons who have been committed to a mental institution or have been adjudicated a mental defective. The problem is that in writing this law, Congress did not define adjudication as a mental defective, or even the term mental defective. Various courts have created different definitions, mostly focusing on how dangerous the person in question might be. They have often found that the intent of the Gun Control Act was to deny firearms to anyone who was the least bit questionable. The Eighth Circuit Court of Appeals, which covers Missouri, has taken a different approach. It defined the term “mental defective” as "mental retardation" in U.S. v Hansel, 474 F.2d 1120 (Ct. App. 8th Cir 1973) at 1123. This makes some sense, as children are not allowed to have guns and retardation artificially gives an adult the mentality of a child. This was a criminal case and gave the benefit of the doubt to the defendant.
The Code of Federal Regulations at 27 CFR 178.32(d)(4) prohibits the sale of firearms or ammunition to, or the possession of firearms or ammunition by, persons who have been “adjudicated” as “mentally defective”. The definition of “adjudicated” is at 178.11 which refers to a determination by a “court, board, commission, or other lawful authority”. The “court, board, commission, or other lawful authority” must find that as a result of “marked” subnormal intelligence, or mental illness, incompetency, condition or disease that the individual is a danger to himself or to others OR that he lacks the

mental capacity to contract or manage his own affairs.
The “other lawful authority” language gives the authority to ban gun ownership to an entire world of administrative agencies. Such authority should be limited to agencies that determine mental disabilities and take evidence of mental fitness. The decision should also reflect a current disability. In one case a veteran was adjudicated incompetent because of past drug use, a habit he had beaten.
This authority has come up in the context of persons who received disability ratings from Social Security or the Veteran’s Administration for mental problems. In one such case an individual was determined to have various mental defects including paranoia. However, he was not found to be a danger to himself or others or to lack the mental capacity to contract or manage his own affairs. He was not prohibited from owning firearms. In such circumstances, the individual must consider if it is a good idea to exercise his rights. Mental problems often get worse rather than better, and given a diagnosis of paranoia, even a completely justified self-defense shooting would be open to many questions leading to criminal and civil actions. Family members and psychiatrists should discuss this potential problem.
In one Clay County, Missouri case an individual attempted to commit suicide by running his car in the garage. He failed but his family responded by seizing his guns; they left the car. The family contacted the individual’s attorney and asked if what they had done was legal. People often ask this question after the fact, if at all. What they had done was not legal. They had taken someone’s property and transferred several handguns without first getting a Missouri Permit to Acquire (when such permits were requires). Such informal seizures often result in the guns disappearing into the black market, to the detriment of the legal owner. The family was convinced to leave the guns with the individual’s lawyer, which also was not legal but preserved the property. The attorney then obtained a restraining order requiring him to keep the guns until further order of the court.
Congress has just passed and the President has signed a bill which makes it possible to extract oneself from an adjudication of mental incapacity. More on this later.

DIVERSION SENTENCING page 77
Some sheriff's departments have argued that persons with a suspended imposition of sentence cannot purchase a gun if the SIS was the result of a guilty plea. This is wrong on two counts. Nearly all suspended imposition of sentences are the result of a plea. Secondly, the Missouri Supreme Court

case which ruled that an SIS was not a conviction involved a petitioner who had pled guilty in exchange for the SIS; YALE v CITY OF INDEPENDENCE, 846 S.W.2d 193 (Mo. 1993). Since there no longer a requirement to obtain a permit to buy a handgun, this is an issue only relating to obtaining a License To Carry.

WHILE INTOXICATED

The penalty for carrying a firearm while intoxicated has been raised to a Class A misdemeanor punishable by a year in jail if the firearm is unloaded, or a Class D felony punishable by 4 years in prison if the gun is loaded. Anyone who might drink should lock up the gun and leave it there. Some prosecutors are salivating with desire to lock up license holders; it is best not to give them the slightest opportunity. See MISSOURI WEAPONS AND SELF-DEFENSE LAW at page 81.

INTOXICATED Page 81

Under RSMo 571.030.1(5) and 571.030.7 it is a Class D felony to possess a loaded firearm or other projectile weapon while intoxicated and a Class A misdemeanor to possess an unloaded firearm while intoxicated. The definition of intoxicated at RSMo 571.010(11) is "substantially impaired" either mentally or physically "resulting from introduction of any substance into the body." It does not include the DWI standard of .08% blood alcohol at RSMo 577.037.5. However the DWI standard has been introduced into evidence in every intoxicated with a gun case I have seen since it became a felony.

One can be intoxicated under the DWI standard if one has one beer, one glass of wine or one mixed drink in the course of an hour. This is only a rule of thumb, but the concept of the operation is to keep one's thumbs out of jail. If one is going to drink *at all* it cannot be too strongly advised to ***leave the gun at home!*** If one is at a party and finds out too late that someone spiked the punch (my first hint was an inability to remember names) it is time to unload the gun and lock it in the trunk of one's car. If one encounters a policeman in the course of this mission who demands a breath test, decline. It is a little more difficult to prove intoxication if there is no sobriety test, not impossible, but a little more difficult. The Department of Revenue cannot take away one's driver's license unless the guest of honor is found in a position to control the vehicle; RSMo 577.041. However, under *State v Stephen J. Dvorak*, ED91727 (Mo.App. E.D. 30 June, 2009) the defendant's refusal to provide a breath test can be used

against the defendant in court in an intoxicated with a gun case. The argument will be that the defendant refused because he knew he was intoxicated. This case was been appealed to the Supreme Court on 2 September, 2009.

The DWI statute and the intoxicated with a gun statute measure different concerns. The DWI statute can be triggered with a minor amount of drinking. It is designed to restrict the use of the two-ton guided projectile moving at 25 to 70 miles per hour among other such projectiles and pedestrians. A minor level of intoxication can impair motor reflexes and hand-eye coordination. The intoxicated with a gun statute is concerned with "substantial" impairment. While it refers to physical impairment it is the mental impairment affecting the judgment to draw and use the gun which is the greatest danger. Physical impairment may result in clumsy use of a gun, resulting in an accidental discharge or poorly aimed shot. Mental impairment affecting the judgment to draw and use the gun involves a greater level of intoxication. One may be too drunk to drive, but still capable of telling the difference between a deadly threat and a pink elephant.

The legislature doubtless wrote this law out of concern over the effects of alcohol and illegal drugs. It has recently been applied to the side effects of prescribed medication.

On 17 November, 2009 the Missouri Supreme Court ruled on *State v John L. Richard* SC89832. Three years earlier, Mr. Richard had been given the wrong prescription by the Veteran's Administration hospital. He had serious side effects, largely blackouts. When he began to black out he told his wife to take his gun so that paramedics would not be alarmed. When his wife called 911 she was asked if she needed police assistance. She refused and asked for an ambulance. A sheriff's deputy heard the call for an ambulance and came to the Richard residence; this is not unusual especially in small towns. Mrs. Richard said that she did not need him she needed an ambulance but he came in anyway. He saw Mr. Richard's pistol on the computer table. Mrs. Richard told him that she had placed it there at his direction. The deputy conceived that notion that this was an attempted suicide by cop. He seized the pistol and two other guns in the home. The Supreme Court's opinion adopts the prosecution statement of facts to claim that Mr. Richard had threatened suicide. Mr. Richard denies making such a threat. His wife denies making such a report.

Mr. Richard went to the hospital where the medical doctors adjusted his medication and due to the deputy's report a psychiatrist interviewed him and found that he was no threat to himself or others. For a month he and his wife attempted to retrieve the guns from the sheriff's department without

success and without a reason. He hired me to write a letter threatening a suit for replevin. A week later he was charged with being intoxicated and in possession of firearms. The judge in Mississippi County dismissed the charges finding the statute unconstitutional as applied to guns in the home based on the *Heller* decision which stated there was a federal constitutional right to possess guns in the home for self-defense.

The Missouri Supreme Court reversed finding that the statute is not unconstitutional as applied to the home. The Court cited cases in which a drunk shot someone, these cases are not hard to find. The Court found that even if the U.S. Supreme Court finds that the Second Amendment is incorporated against the states, this statute is not unconstitutional under the federal or Missouri Constitutions.

Under RSMo 571.030.5 it is not a crime to possess a firearm while intoxicated if acting in self-defense. The Court ruled that Mr. Richard was not acting in self-defense. The Court ruled, "There is, at this point, no self-defense issue in this case. Richard has no standing to raise hypothetical instances . . ." Actually, this was not a hypothetical. Mr. Richard, a Katrina refugee from Mississippi, had learned of a local woman who was committing fraud with FEMA funds. He reported his discovery and was threatened with eventual death. The threat was "eventual" because he was threatened with being buried alive, which cannot end well. Mr. Richard had a valid License To Carry from Mississippi, which is valid in Missouri. He was carrying a pistol because even the threat of eventual death is alarming.

The result of the Court's decision is that if one has a beer with a firearm in the home, he can be charged with a felony. Unless the barbarian hordes are at that moment beating down the door one will go to prison, or at least jail and be forced to pay a fortune in bond, attorney fees and court costs.

EXPUNGEMENT OF RECORD page 88 and 297

Equitable expungement through the courts is no more. The U.S. Supreme Court ruled in UNITED STATES ET AL v BEAN 537 U.S. 71 2002 that district courts could not expunge criminal records. Mr. Bean had applied to the BATF under 18 U.S. Code section 925 to expunge his criminal record. Congress has refused to fund this activity. Without the money to buy a piece of paper on which to write such an expungement, much less to do the investigation, the BATF rejected the application. The Court ruled that this did not amount to a denial and therefore Mr. Bean could not appeal to the courts.

On 31 May, 2005 the Missouri Supreme Court ruled on IN RE: THE MATTER OF SCOTT DYER that circuit courts do not have the power to grant equitable expungements of criminal records. Their reasoning was that such power was not mentioned in the very limited expungement statute.

It would appear that courts can order taxes, run school districts, break up industries, determine voting proceedures, decide monumental questions of Constitution, custom, privacy, and public policy, as well as send individuals to their death; they cannot decide if the corrections department has done its job and reformed an individual.

DEALERS page 91

Wal Mart, often the only gun dealer in some areas of the state, has announced an agreement with Mayor Bloomberg of New York City to the effect that anyone who has purchased a gun which was later traced by law enforcement will not be allowed to purchase guns in any Wal Mart. This was surprising because Mayor Bloomberg's group had previously targeted Mom and Pop gun stores which do not have the resources to fight him. It was determined that Wal Mart wants to open stores in New York City. These stores will not sell guns, but the price of selling socks and toys in New York City is to harass its gun customers across the country. Traces are not always because the gun was used in a crime, it may have been found and a trace for its owner may find that at some point in its history it was sold in a Wal Mart. The Missouri legislature responded with RSMo 571.014 which makes it a Class A misdemeanor to refuse to complete a transaction simply because a gun had been traced through the customer. The dealer can refuse the transfer if in their own judgment there are "articulable reasons specific to that transaction" which indicates a problem with the transfer.

PERMIT TO ACQUIRE HANDGUNS REPEALED!
Page 92

As of 28 August, 2007 it is no longer necessary to get a permit from the sheriff before buying a handgun. If an individual buys a handgun from a licensed dealer, the dealer will run the buyer through the National Instant Check System (NICS). That is all.
If an individual buys a gun at a gun show, the dealer will run the buyer through NICS. People will say differently, they are lying.

If an individual inherits a handgun within Missouri, the executor of the estate only needs to give the gun to the heir. If the estate is outside of Missouri, the heir must comply with the laws of the other state. The easiest way to do this is to have a licensed dealer transfer the gun to a dealer in Missouri. Federal law allows the gun to be transferred directly to the heir; however, this is one area where state law can be more complex.

If an individual buys a handgun from an individual, there is no requirement to run a NICS check. The gun is transferred like any other piece of property. It is not legally possible to run a NICS check unless a licensed dealer is transferring the gun. If the buyer and seller do not know each other it would be a good idea to have a licensed dealer transfer the gun. The dealer will place the gun in his books. After the Buyer fills out a 4473 the dealer will then do a NICS check. This gives the Seller a piece of government paperwork showing that he did not sell to a prohibited person. The Buyer gets a piece of government paperwork showing that he was not knowingly buying a stolen gun. If he were knowingly buying a stolen gun, he would not have run it through the dealer's records. The dealer will charge a fee, but it is cheap insurance.

A bill of sale should be considered minimum documentation of a sale. One of my clients had his gun come to the attention of the police. At some point in its history it had been stolen and placed on the national list of stolen firearms. There were some complications involving handcuffs and a holding cell before he could demonstrate that he did not steal the gun and did not know it was stolen. Documentation helps prove these elements.

I despise practicing law with fill-in-the-blank documents; however the following provides some basics of legal protection.

BILL OF SALE

For $_____ cash and other valuable considerations from buyer, _____, Seller, sells, vends, and conveys to _____Buyer, a (Make and Model) _____ caliber _____ serial number _____.
Dated this ____ day of _____, 200 __.

_____ _____
Seller ID # _____ Buyer ID #_____

On this _____ day of _____, 200 __, appeared before me _____, known to me to be that person and signed the above as his/her free act and deed.

_____
Notary Public

My Commission Expires:

On this _____ day of _____, 200 __, appeared before me _____known to me to be that person, and signed the above as his/her free act and deed.

_____
Notary Public

My commission expires:

Instructions: This is a very basic bill of sale, not a contract. It is not essential that it be notarized, but this proves the identity of both parties and is highly recommended. Date of birth and ID number is not required but helps prove the identity of the persons with whom you do business.

Under RSMo 571.072 Pistol permit records are no longer open records. Sheriffs are no longer required to keep these records. At least some sheriffs are destroying the records.

SEIZURE page 100
The police chief of Hazelwood, Missouri has issued an educational memo to the members of his department. The Chief, who was also a plaintiff in the lawsuit to find the License to Carry law unconstitutional, has instructed his officers to seize any firearm carried under this law. This will serve to educate his department about federal lawsuits for depriving persons of property without due process of law. Any policy which provides work for lawyers must be a good thing.

Some departments have instructed officers to confiscate handguns if the owner does not have a copy of the Permit to Acquire obtained when the gun was purchased. This again deprives the citizen of property without due process of law. Law enforcement must have probable cause to believe that a gun was illegally obtained before it can be seized. The fact that a person has a License to Carry makes it less likely that the gun was illegally obtained.

PUBLIC ASSEMBLAGE--RATIONAL pages 106-115
In 1874 the Missouri legislature began to outlaw the possession of weapons in a "public assemblage", but neglected to define the term. Not until 1998 did a Missouri court have occassion to define the term; I was the attorney who advanced the accepted definition. Five years later, as part of the License To Carry law, the Missouri legislature abolished this offense; and with it my role in legal history, and rendered nine pages of my book of historical interest only. On the other hand, they abolished a reason to put people in jail, so I can live with it.

CCW EXCEPTIONS
Law Enforcement Officers Out of Jurisdiction pages 136-7.
By statute all peace officers possessing the duty and power of arrest may carry conceal “whether such officers are within or outside their jurisdictions or on or off duty.”

On 22 July, 2004, President Bush signed the "Law enforcement Officer's Safety Act", 18 U.S. code section 926B. This act allows active duty law enforcement officers, and qualifying retired officers to carry concealed weapons in any state. It does not specifically refer to U.S. possession or territories such a Puerto Rico or Guam. it does not specifically refer to the District of Columbia. It probably does not apply to Indian Reservations or military reservations. It would appear that it was intended to have broad application; however, it took twelve years to pass this measure, indicating a certain amount of opposition. Given this opposition, its extension into unique federal jurisdictions should not be assumed. New York state law allows concealed carry by prison guards; however, in 1987 Julio Marrero, a federal prison guard stationed in New York was arrested, convicted, and the conviction upheld for carrying a concealed weapon; Robinson WOULD YOU CONVICT New York University Press, N.Y. 1999 at 54-77.
The definition of a law enforcement officer consists of an employee of a governmental agency who "is authorized by law to engage in or supervise

the prevention, detection, investigation, or prosecution of, or the incarceration of any persoon for any violation of law, and has statutory powers of arrest; . . . ". The employee must also be authorized by his agency to carry a gun and qualify under his department's standards "if any".
While the definition of law enforcement officer refers to an employee engaged in incarceration, the employee must also have the power of arrest. This indicates that the law does not apply to corrections officers. This is unfortunate. While a criminal may not remember the arresting officer, he is almost sure to remember the guard who monitors his movements in the following years.
The law specifically includes retired law enforcement officers who retired in good standing after a total of fifteen (15) years or retired due to a service-connected disability. The retired officer must also meet, at his own expense, his state's standards for firearms training every twelve months. New York City is reported to have a policy of arresting retired officers and seizing the gun until the individual's retired status is confirmed. This sounds unconstitutional as hell.
There is some complaint that some agencies are refusing to qualify their retired officers. Some agencies also complain that the statute does not answer liability issues. Wisconsin is attempting to answer these questions on a state level, and there is some intention of answering these questions on a federal level. However, good intentions on a federal level are not an encouraging guarantee.

Under RSMo 571.030 all qualified retired peace officers are exempt from the prohibition against concealed carry. The definition of “qualified” generally mirrors the federal statute. It still requires yearly qualification.

Pilots who qualify under the federal flight deck officer program under 49 U.S.Code §44921 are exempt from Missouri’s prohibition against concealed carry.

Coroners and Medical Examiners
Coroners, deputy coroners, medical examiners, and assistant medical examiners are exempt from the concealed carry ban. Coroners have always been considered law enforcement officers (see page 246). They are being replaced by medical examiners, medical doctors trained to find evidence from dead bodies. Some counties contract with medical examiners for services as needed. The statute does not differentiate between full or part time employment.

At least one prosecutor has complained that coroners are specifically allowed to carry under the law, but not prosecutors. Prosecutors have much more contact with live criminals, but are not specifically allowed to carry. The reason is simple; the forensic examiners on "CSI" carry guns, and the prosecutors on "Law and Order" do not.

CCW PLACE EXCEPTIONS
Vehicles page 145
Under the statute the right to carry loaded concealed handguns in one's home is extended to one's vehicle. This extended right is confined to persons 21 years old or older who lawfully possesses the firearm. This right only applies to "concealable" firearms (they mean handguns). It does NOT apply to rifles, carbines, or shotguns. It doesn't have to make sense, it's just the law.

The term "lawfully possess" means that the individual can legally own a handgun. Some persons have privately acquired handguns in Missouri without going through Missouri's mandatory, but lightly enforced, purchase permit system (see MISSOURI WEAPONS AND SELF-DEFENSE LAW at page 92). While these handguns have been unlawfully purchased this does not mean that they are unlawfully possessed.

The handgun may be carried anywhere in the passenger compartment of the vehicle. As in the home, one must be cautious about access by children. People have been charged with endangering the welfare of children by allowing access to guns, and certain prosecutors may take this as a consolation prize.

ADULT ABUSE
Jury Instruction page 169
Since writing the above section, the Missouri Supreme Court has adopted MAI-CR 306.07 as an instruction for the adult abuse defense. It is therefore mandatory for such cases. The Missouri instruction reads:

In order for a person lawfully to use force in self-defense, she must reasonably believe she is in imminent danger of harm from the other person. She need not be in actual danger but she must have a reasonable belief that she is in such danger.

If she has such a belief, she is then permitted to use that amount of force that she reasonably believes to be necessary to protect herself.

But a person is not permitted to use deadly force, that is, force that she knows will create a substantial risk of causing death or serious physical injury, unless she reasonably believes she is in imminent danger of (death) (or) (serious physical injury) (or) (forcible rape) (or) (forcible sodomy) (or) kidnapping).

And, even then, a person may use deadly force only if she reasonably believes the use of such force is necessary to protect herself.

As used in this instruction, the term "reasonable belief" means a belief based on reasonable grounds, that is, grounds that could lead a reasonable person in the same situation to the same belief. Evidence has been introduced that the defendant as a result of [name of victim's] prior conduct, was suffering from "battered spouse syndrome." If you believe that defendant was suffering from such syndrome, you must consider how the situation would appear to a person suffering from such syndrome. Thus, in determining whether the defendant's beliefs as to her situation were reasonable, that determination should be based on what an otherwise reasonable person who is suffering from battered spouse syndrome would believe. It does not depend upon whether the belief turned out to be true or false.

The instruction also has paragraphs to fit specific situations. If the reputation of either party for peacefulness or violence is in evidence, this can be included in the instruction. There is even a paragraph for situations in which the defendant initiated the violence. This instruction assumes that the defendant will be a woman. However, the statute is gender neutral and the instruction could be used by a man if the evidence fits, and in some cases it will. The instruction contains the evil of referring to the complaining witness as the "victim", which seems to presuppose an innocent role. However, the jury does not see this shorthand reference. The defense is not limited to murder cases; it can be used in any assault or brandishing case. The inclusion of a fear of rape as a reason to invoke the defense will make it useful as marriage is no longer a defense to rape under RSMo 566.030.

CITIZEN'S ARREST AND DETENTION at page 194

Missouri now has a law against slavery at RSMo section 566.206; it only took 140 years. At RSMo 566.203 Missouri statutes specifically outlaw "abusing an individual through forced labor". It is therefore unwise to force the prisoner to clean up after himself; broken glass, urine stains, etc.

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