

## PACKING

The pizza guy started it all. Young Patrick Feely was tired of being a soft target for thieves and pranksters on his delivery runs, so he decided to carry a gun – not just any Saturday Night Special – but a .50 caliber Smith and Wesson Magnum. As Dirty Harry would say, “The most powerful handgun on earth.”

Feely thought he knew the law and that, even though the Sheriff stopped giving permits years ago, any reasonable explanation involving a business rationale would provide him with an ironclad affirmative defense to the charge of carrying a concealed weapon.

Perhaps he had heard of the legendary case of the Washtenaw County, Michigan prostitute who used a similar “place of business” defense to beat the rap. She carried her piece (if you’ll pardon the expression) in her car....actually, it was in her lap.

As bad luck would have it, Feely was stopped by a policeman who spotted his expired license tags.

As any conscientious citizen would do, Feely immediately informed the officer he was armed. The officer, following routine procedure at the time, cited Feely for carrying a concealed weapon. When Feely advised the officer of the dangers he encountered by carrying large amounts of cash, the cop said “tell it to the judge”.

Illegally carrying a concealed weapon is a felony and conviction can bar firearm possession for life. Feely dug in, rejected a plea bargain, and Judge Thomas Crush, known to some around the Courthouse as “The Crusher”, acquitted him!

Feely and his lawyer then embarked on a mission to strike down the carrying ban as unconstitutionally vague. Neither citizens nor police knew whether someone was in compliance. Common Pleas Judge Robert Ruehlman agreed and struck down the law. The First District Court of Appeals affirmed, but the Ohio Supreme Court reversed. The 145 year old law remained on the books.

The case, however, caught the eye of 125<sup>th</sup> Ohio General Assembly which passed the Concealed Carry law in April 2004 joining 37 other states with similar statutes.

Now, unless an applicant is disqualified by certain limited criteria, the local sheriff must issue a Concealed Handgun License within 45 days.

Chuck Klein, one of the crusaders who brought Feely and his lawyers together, was issued the first CHL license in Hamilton County personally by Sheriff Simon Leis, who earlier opposed the law, but is apparently not one to hold a grudge.

I have been fascinated by the history, mechanics and artistry of firearms since I was a child. I have evolved from a 10 year old coonskin-hat-wearing fan of Fess Parker's Davey Crockett to the honored status of "young geezer" at the semi-annual rendezvous of the National Muzzle Loading Rifle Association in Friendship, Indiana—just over the border.

I have carried a firearm on occasion, once on a Middle East road adventure from Switzerland to India in 1967, and on occasion when threatened by gangs while I served as a U.S. Magistrate. The Marshals always said they would gladly help me establish my affirmative defense if necessary – but now, the affirmative defense legal framework has been replaced by the permit law.

I thought the required permit course would be a good way to eliminate the uncertainty if I ever again needed to carry a gun – also – I might learn something.

The required 12 hour course was being offered to members of the Cincinnati Revolver Club and I signed up immediately.

The Revolver Club was founded in 1908 as a social club for revolver and pistol aficionados. It is the nation's oldest continuing handgun club. It was originally hosted in the basement of the Brendamour store on Sixth Street. The club later built shooting ranges in the basement of the Alms Hotel and later at a C. G. & E. Facility in Hartwell. In 1965, the present home was built in Winton Place. It is a dingy but adequate bunker with 20 booths. Today the special concern is with shooters using copper jacketed instead of frangible ammo. A few more years of wild shots with high power ammo – and the back of the building may just crumble.

Our class was small – only eight. Half were retirees, two of them from law enforcement. One shoed horses for a living. There was one grad student, a nurse, and an engineer.

The level of experience ranged from lifelong to none at all. Three of the older gents had been carrying concealed weapons for years. I think our instructors liked teaching the novices because they followed instructions and didn't have a lot of bad habits to unlearn.

You would think any group of gun enthusiasts would be a fairly conservative group, but our group seemed more libertarian than far right. There was deep disappointment with President Bush. "Too friendly with the Saudis" said one. Another mourned the increasing losses among our troops in Iraq and favored "bombing the country back to the stone age." When asked why we owned guns, the usual answers were given: protection, competition, recreation, hunting, collecting – but one fellow said "because we can". Now, one can conjure up all sorts of things one shouldn't do just because you can...., but his point was not lost. Rights need to be exercised and the most important ones are usually lost not because they are taken away, but because they are given away.

The course was an expanded 10 hour version of the NRA basic handgun safety course, plus two hours of proficiency testing on the range.

Our three instructors were former policemen experienced in teaching not only the NRA course, but also a tactical defense course which is all about combat shooting.

They described the mechanics of revolvers and semi automatic guns, preparation and strategy for when and whether to carry, and mostly stressed the importance of good habits. There is no such thing as an accident. We were instructed in the mantra to always point a firearm in a safe direction, keep your finger off the trigger until ready to shoot, keep a gun unloaded until ready to shoot and never assume a gun is empty until it's checked. Even then its best to always handle any gun as loaded even if you know it's unloaded.

The rules of combat shooting went further. For example, you should not point a gun at anything you wouldn't be willing to shoot — no brandishing. Also it is important to not only be sure of your target but also what is in the background.

One overriding point was stressed in the lengthy discussions of the law – don't ever shoot anybody! The laws on self defense and the duty to retreat are so arcane, that any shooting will almost always cause one to be locked in litigation for a long time.

The most remarkable thing about the course was that there were no wise guys or know-it-alls in the class, even though many of us had been around firearms all our lives. People who kept loaded handguns on every floor of their homes discovered dangerous loading habits or sloppy storage practices. Novices learned that imaginary scene setting and having a plan could replace the floating anxiety brought on by walking through a deserted downtown municipal garage. Some of the advice at first seemed counterintuitive. For example, it is best not to keep firearms by your bed at night. The little extra time it takes to get up and move across the room to a dresser will increase your level of alertness by many magnitudes and may thereby avoid a terrible mistake.

We rounded out our book learning with a trip through the mystifying cave-of-the-winds known as gun laws. If you're carrying, you had better keep moving on your "peaceable journey" through a school zone. If you stop, you're in violation. You might be legally carrying a gun in a local park, but be in violation if you go to the restroom because it's a public building. Concealed carry in automobiles used to require a gun to be visibly on your person or locked up. Now the law is a little simpler, but you still must apprise any officer who stops you whether you are or are not carrying a gun.

Our instructor told the story of being pulled over on Kentucky's AA highway and having a difficult time catching the attention of the officer despite several required mentions of the fact that he was armed. The disinterested officer finally finished his speeding ticket business and then said, "Buddy, this is Bracken County. Everybody carries a gun."

We eventually completed our classwork and headed for the range. Most did well. Because our class was small and we were all members of the club, our instructor offered an introduction to tactical shooting. It consisted mostly of shooting from the hip at close range and shooting while running across the range as if ducking fire. I had heard of federal agents being involved in gunfights in which rapidly emptying 15 shot clips in their Glocks failed to find a target. After a little taste of running and shooting, it was easy to picture.

The course ended with a written exam. Most did well except for one fellow who utterly failed. I'm pretty sure he had trouble reading and there was no mechanism in place for an oral exam.

After jumping through a few more regulatory hoops, I obtained my Ohio license to carry a handgun from the Sheriff – not any weapon mind you – only a handgun. That first year 45,000 Ohioans did the same – nothing like the expected 100,000.

Today 48 states have variations on concealed carry permits. Thirty seven states have reciprocity laws. With my Ohio and New Hampshire permits, I am covered in almost all the states.

President Obama may have been correct, that in these difficult economic times some are prone to find comfort in their religions and guns. But the issues swirling around gun ownership and concealed carry are ever increasing.

Now that the Supreme Court has affirmed the right to keep and bear arms as a personal right, the issue of the application of that Second Amendment right to all the states will be on its docket soon.

Increased passage of so called “defending your Castle Doctrine” or “Stand your ground” laws are muddling the already confusing common law of self defense. Transporting firearms in vehicles by citizens who do not possess permits is also a rich area for confusing legislation, with endless possibilities for bad drafting on the “traveler assumption” or so called “peaceable journey” exception to school zones and the like.

“Opt out” statutes allow businesses to post signs prohibiting concealed carry, violation of which can be grounds for revocation of a permit. You’ve seen the signs with the international “verboden” symbol superimposed over a gun silhouette.

I would like to ask some shop owners if they are aware that if a patron in their store has a concealed carry permit, they can be reasonably certain that the patron has no felony convictions, has never been convicted of any drug offense, has no mental defects or disabilities, and has passed a criminal history background check.

I mean really, how much do they know about their other customers?

And so the efforts to restrict the occasions and places you can carry a weapon go on unabated.

It is so common in these days of Twitter and Facebook for people to have instant, passionate opinions about everything – whether they have any experience or not – abortion rights, executive compensation, Dancing with the Stars – you name it.

Now that I have a permit to carry I have become a soft target at cocktail parties and the like by many with big negative opinions on the subject – some thoughtful, others not.

In an effort to study the impact of these concealed carry laws on crime rates and steel myself against personal criticism for the decline of Western Civilization – I have hit a wall.

Economist John Lott's pioneering statistical study "More Guns, Less Crime" has been countered by a study done by the Violence Policy Center in Washington. They called it - what else - "More Guns, More Crime".

The methods and conclusions of both camps are under heavy attack by academics and only a few shreds of research are surviving the intense scrutiny.

For example Florida's carry law seems to have driven the number of robberies down, but burglaries have risen.

Oddly enough, a University of Washington study showed homicide rates in Canada and the US were very similar. Yet handgun ownership rates were vastly different. That report went on to say,

*"If you are surprised by my findings, so are we.  
We did not begin this research with any intent to "exonerate"  
handguns, but there it is – a negative finding, to be sure,  
but a negative finding is nevertheless a positive contribution.  
It directs us where NOT to aim public health resources."*

The report went on to note:

*Scholars engaged in serious criminological research into "gun control" have found themselves forced, often very reluctantly, into four largely negative propositions. First, there is no persuasive evidence that gun ownership causes ordinary responsible, law abiding adults to murder or engage in any other criminal behavior—though guns can facilitate crime by those who were independently inclined toward it. Second, the value of firearms in defending victims has been greatly underestimated. Third, gun controls are innately very difficult to enforce.*

*...”Therefore, the fourth conclusion criminological research and analysis forces on scholars is that while controls carefully targeted only at the criminal and irresponsible have a place in crime-reduction strategy, the capacity of any type of gun law to reduce dangerous behavior can never be more than marginal.”*

It may be true for some, as John Lennon sang, that “happiness is a warm gun.”

I’ll be happy when school children are offered gun safety courses. When video games stop simulating vicious behavior with firearms, and when gun laws focus on safety rather than the unrealistic attempt at removal of hundreds of millions of guns from the culture. Oh, and finally I’ll be happy when the level of civil discourse in this country improves to the point it is safe for a gun enthusiast to go to a cocktail party.

J. Vincent Aug, Jr.

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