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Criminal Law--The Law as to Concealed Deadly Weapons

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Assuming the above to be true—that this use, maintenance or grant of a right of way would be a breach of the restrictive covenant—an injunction may and should be granted if the requirements of mutuality and notice are met. It has been said above that, unless there is some mutuality of covenant, purchasers of lots in a restricted subdivision may not enforce the covenant as against one another. However, it has also been said that a recorded plat embodying the restrictions will be sufficient evidence of the quasi-mutuality of covenant necessary to allow such enforcement, and in the situation here being considered there was such a recorded plat. Further, it has been recognized that constructive as well as actual notice of the restriction is enough to bind a subsequent purchaser, and in the hypothetical situation it was assumed that the defendant had not only constructive, but actual, notice of the restriction.

Finally, under the original hypothetical situation the defendant proposed to act in his individual capacity and, therefore cannot rely on the right of eminent domain as a means of breaching the restrictive covenant. However, when the added fact is assumed that the defendant is only asserting a right to dedicate the lot in question to the county for the purpose of constructing the proposed extension to South Ridge Drive, the question of eminent domain does arise. As has been shown, however, it is very probable that this proposed dedication should be held invalid for lack of acceptance, and for that reason the necessity of challenging the county’s right to eminent domain is averted.

CHARLES R. HAMM

CRIMINAL LAW—THE LAW AS TO CONCEALED DEADLY WEAPONS

Man, by instinct, has always been and always will be concerned with his own personal safety. Naturally, this concern has led to the development of numerous instruments which he has used both for offensive and defensive purposes. These instruments vary in description to such an extent that practically any object capable of inflicting bodily injury has been used as a weapon. However, they all usually have one common characteristic: they are relatively small and compact and capable of being carried on the person. In their evolutorial development an attempt has been made to obtain a maximum of killing power from the smallest possible weapon. In trying to reach this goal, man has used everything from a rock to the powerful hand guns of the present day.
If these compact weapons had been used wholly for legitimate defensive purposes, arguments advocating regulation would be greatly weakened, but, of course, this is not the case. Unfortunately, most of these weapons are well known implements of crime and unjustifiable violence, as well as a means of defense. Many are directly associated with the underworld, not necessarily the organized underworld, but with the petty thief, the hold-up man and the burglar. Hence the danger in not limiting the carrying of such weapons is readily seen. Not so apparent, however, is the danger in permitting the non-criminal element to carry weapons at will, without regulation. The danger there lies in the fact that often tempers are suddenly aroused with the result that a conveniently carried weapon produces death or serious bodily harm. In most cases, such a result could have been averted had not one of the participants been armed with a concealed weapon.

A question which immediately arises in connection with the last sentence is: would not the same injury have occurred had the weapon been carried openly? In other words: Should not the same public policy apply in regulating the carrying of unconcealed weapons as concealed weapons? The answer is that the policy is not the same since there is a stronger desire and need to regulate the latter, i.e., the carrying of concealed weapons. The reasons for this differentiation are three-fold. First, it may be strongly contended that when a weapon is carried openly an affray or brawl may be averted because would-be participants will not be as anxious to engage in combat when they know that a deadly or dangerous weapon may be used against them. Second, for centuries, civilization has abhorred the sneak attack and has always disfavored the unfair fight among individuals. It is the concealed weapon which produces unfairness and it is this one element which the lawmakers have sought to eliminate. Third, through the regulation of concealed weapons, it is thought that the populace (which includes the hoodlums and criminals) will be deterred from going about armed and ready for offense or defense since most people, if permitted, will not carry a gun or knife openly, but would rather carry it hidden from view.

This stronger policy toward regulating the carrying of concealed weapons is borne out by the fact that all the forty-eight states have statutes regulating the carrying of concealed deadly weapons, while a lesser number do not prohibit the open carrying of such weapons.

It is not to be inferred from what has been stated that the carrying of concealed weapons by those other than law enforcement officers cannot sometimes be justified. There are those who, at times, should be permitted to carry a concealed weapon. For instance, the person
who buys a pistol from a store should be allowed to take it home in the box in which it came. Or the owner of a pistol should be permitted to take it to a repair shop without fear that he may serve a sentence in the penitentiary if an officer discovers the gun. Other situations which justify the carrying of a concealed gun include those involving the sportsman or target shooter. Target shooting is a sport increasing in popularity, and more and more guns are being sold for this purpose. Should not one who travels to and from various gun clubs and shooting matches be exempt from the statutes in question? Another group includes the hunter and the farmer who also have legitimate purposes in owning and using guns.

These are a few of the problems which a useful and workable statute should dispose of; however, it is surprising how few are that complete. Most of them give these considerations little or no treatment and the treatment that is given is usually both indirect and inadequate. However, it is with these statutes with which the legal forces of this country must work, regardless of their impracticability. It is the construction placed on these statutes which forms the subject matter of this article. While this is not a statutory study in the sense that all the state statutes will be cited and divided into various categories, it is the product of a study of the statutes. An attempt has been made to clarify the problems which frequently arise under most of the statutes. These problems are usually general in nature because the basic prohibition of all the statutes is the same, i.e., the prevention of the carrying of concealed deadly weapons, although the penalties, exemptions, etc., differ greatly.

A fundamental approach to problems arising out of such a statute is first to consider the constitutional limitations involved. In the federal and in most state constitutions similar provisions are found regarding the right of the people to bear arms. The second amendment to the United States Constitution contains the provision "... the right of the people to keep and bear arms shall not be infringed."¹ This right, however, is generally recognized as not being absolute, particularly in connection with the regulation of the carrying of deadly weapons.² Even at common law there were restrictions upon the right of the people to go armed.³

As early as 1813, a state statute was enacted in this country pro-

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¹ For an example of a state constitutional provision, see Ky. Const. sec. 1, where the legislature is expressly given the power to enact laws to prevent persons from carrying concealed weapons.
² Miller v. Texas, 153 U.S. 535 (1894); State v. Reid, 1 Ala. 612 (1840).
³ WHARTON'S, CRIMINAL LAW 2202 (1932).
hibiting the carrying of concealed deadly weapons. This statute was enacted by Kentucky, a state which at the time was regarded as a backwoods area where the gun was still the law. From this beginning to the present day, the trend and end result has been court approval of regulating the carrying of arms. This approval is based upon the courts' belief that such regulation constitutes a reasonable exercise of the state's police power, viz., the prevention of crime and accidental injuries. With this idea firmly entrenched in the judiciary plus the fact that all 48 states have regulatory statutes, it can reasonably be inferred that there is at present no serious problem relating to the constitutionality of the general type concealed weapon statutes.

A. Deadly Weapons

It should be borne in mind that such prohibitions are against carrying concealed deadly or dangerous weapons and not merely a weapon. That the weapon must be dangerous or deadly is an essential element of the crime. In discussing what is and what is not a deadly or dangerous weapon, it is convenient to divide them into two categories: (1) non-firearms, and (2) firearms.

Non-firearms are often enumerated in such statutes. A common listing would probably include some or most of the following: blackjacks, billies, bludgeons, metallic knucks, sling shots, dirks and stilettos. Even when there is such an enumeration the phrase "or other deadly or dangerous weapons" is used so that the statute will be all encompassing. Other statutes make no attempt to list the weapons but merely use the term "deadly weapon."

An often used definition of a deadly weapon states that a deadly weapon is any instrument which, when used in the ordinary manner contemplated by its design and construction, will or is likely to cause death or serious bodily harm. This definition naturally excludes a

\[6\] For purposes of this article, dangerous and deadly will be used synonymously as their accepted definitions correspond when defining them as used in concealed weapon statutes.

\[8\] Ky. Rev. Stat. sec. 435.280 (1958); "(1) Any person, not expressly authorized by law, who carries concealed a deadly weapon, other than an ordinary pocket knife, on or about his person, or any person who sells a deadly weapon, other than an ordinary pocket knife to a minor, shall be confined in the penitentiary for not less than two nor more than five years. (2) Sheriffs, constables, marshals, policemen and other ministerial officers, when necessary for their protection in the discharge of their official duties; U. S. mail carriers, when actually engaged in their duties; and agents and messengers of express companies, when necessary for their protection in the discharge of their official duties, may carry concealed deadly weapons on or about their persons." (italics supplied)

\[4\] Ky. Acts. 1812-18 c. 89. This statute was declared unconstitutional by the Kentucky Court of Appeals in Bliss v. Commonwealth, 2 Litt. 90 (1822).

great many articles which are not primarily constructed for use as weapons but are frequently used for that purpose, such as hammers, wrenches, razors, hatchets, etc. Usually such articles are not held to be deadly weapons *per se*; however, they constitute deadly weapons if it is shown that they were used or carried for that purpose. In attempting to prove that one of these instruments was being carried as a deadly weapon, it would be helpful to the prosecutor's case to show that such an instrument is not one normally carried for personal convenience or that, although the accused uses such a tool in his work, he did not contemplate the use of the instrument for that purpose at the time it was discovered upon him. For instance, a carpenter who has changed from his work clothes and gone out for the evening carrying a hatchet on his belt under his coat may be guilty of carrying a concealed deadly weapon.

Firearms—the second category—are generally considered to be dangerous weapons. The problems which most frequently arise involve either a defective firearm or an unloaded firearm. If the firearm is incapable of being fired due to a defective or missing part then it is usually held not to be a deadly weapon. Examples of this are found where the cylinder of a revolver is missing or where the firing pin is defective. If a dismantled gun is being carried then the question of whether or not it is a deadly weapon depends on the length of time required to assemble it for use. If it may be easily assembled and used or assembled with reasonable preparation, then it would be considered a deadly weapon.

Where the statute prohibits the carrying of a pistol, an unloaded pistol is held to be a violation since, loaded or unloaded, the weapon remains a pistol. Although it is not as clear when it is held that an unloaded gun is a *deadly weapon*, this is the prevailing view. It was suggested in a Mississippi case that to require the gun to be loaded would be to read the word "loaded" into the statute. The court went on to say that one might carry the gun unloaded in one pocket and the cartridges in another pocket and thereby evade the purpose of the

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9 People v. Vaines, 310 Mich. 500, 17 N.W. 2d 723 (1945).
12 Hutchinson v. State, 62 Ala. 3 (1878).
15 Hathcock v. State, 99 Ark. 551 (1911); State v. Quail, 5 Boyce (Del.) 310, 92 Atl. 859 (1914); State v. Baumann, 311 Mo. 443, 278 S.W. 974 (1925); 74 A.L.R. 1211-1212 (1931).
16 State v. Bollis, 73 Miss. 57, 19 So. 99 (1895).
statute. But could not such a situation be given treatment similar to that in the case where the gun was dismantled, thereby resting the decision on the time required to make the gun ready for use?

It would seem that a better solution to the problem would be to hold that an unloaded pistol is not a deadly weapon unless there are cartridges nearby which may be inserted into the gun in a relatively short period of time. If there are no cartridges it then may become necessary to determine whether the gun, from its weight and size, could be used effectively as a bludgeon. Certainly, a heavy frame gun should be considered as a bludgeon on equal terms with a wrench or hammer. The manner in which the gun is used or intended to be used may be an important factor in deciding if it is a bludgeon.

B. CONCEALMENT

Another essential element of the crime is that the weapon be concealed. The courts have used no elaborate formulae in determining when a weapon is concealed but have merely defined the word in its common and ordinary meaning. "Conceal" may be defined by such words as to hide, secrete, screen, or cover. It does not necessarily presuppose complete invisibility.17

The test is often said to be whether the weapon is hidden from "general view,"18 or from "ordinary observation."19 This test is determined by a full view of the accused and not by a partial view only. As previously mentioned, partial concealment is not a violation unless the instrument cannot be easily recognized as a weapon.20 However, a weapon is fully concealed if its surface is covered, even though the imprint and outline of the weapon is clearly distinguishable.21 Another example of a weapon known to be on the person but still concealed is where the gun was hidden after the defendant put on his coat but all present saw it before he donned the coat.22

C. "CARRYING ON OR ABOUT"

The two remaining elements of the crime are (1) the carrying of the weapon, and (2) by the person. The first may be disposed of briefly because the word "carrying" does not mean that there must be

17 68 C. J. 35 (1934).
18 Carr v. State, 34 Ark., 448, 450 (1879).
19 Avery v. Commonwealth, 223 Ky., 248, 3 S.W. 2d 624 (1925).
locomotion. In other words, one does not have to move to carry a concealed weapon; possession alone is enough.

The second element presents more of a problem. "By the person" is ordinarily expressed by using the words on or about [the person]. The words are most often used in conjunction with each other but in some statutes only one of the words is used by itself. Possible uses of these words are: on and about the person; on the person; and about the person.

The word "on" has given no trouble to those who have interpreted it. The ordinary meaning which is used defines it as being connected, or in contact with, or attached to. "It signifies closer contact than the word about and is not to be construed in the sense of adjacent."

Applying this common definition, it can readily be determined whether or not the weapon is on the person. If it is not connected or in contact with the person then there is clearly no violation. It is submitted that requiring the weapon to be on the person is too harsh a requirement for conviction, since it seriously impairs the effectiveness of the statute. Many times a weapon nearby may be procured and used with less effort than one which is on the person.

While there are some state statutes which use only the word "about", interpreting it the same as the word on, the majority do not restrict it to such a limited meaning. Ordinarily, "about" is said to include the definition of "on" plus "near", "nearby", and "close at hand."

It is in defining the about and on and about statutes that the "readily accessible" rule has developed. A weapon is said to be about the person when it is readily accessible. This means that it is in such close proximity to the person that it is within his easy reach and convenient control without materially altering his position. The application of this rule most frequently arises in connection with violations in automobiles, and it is believed that a clearer understanding of the rule will be gained if a brief examination of those cases is made.

**Weapons in Automobiles.** It is to be noted that many statutes expressly prohibit the carrying of a deadly weapon in a vehicle, and of course in these states the "readily accessible" rule has no application. In statutes using the word "on", a gun concealed in a vehicle but not

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^24 For a list of the states using on and about see 26 N.Y.U. L. Rev. 210, 211 (1951).
^25 There are a few statutes which do not use any of the possibilities of on or about. Such statutes use the word carry only or go armed.
^26 68 C. J. 92-93 (1934).
^27 68 C. J. 92-93 (1934).
^28 State v. Conley, 280 Mo. 21, 217 S.W. 29 (1919); Welch v. State, 97 Tex. Cr. 617, 262 S.W. 485 (1924).
on the person is not a violation. In comparing a case where this type of statute has been applied with one where the word “about” has been applied, it is apparent that opposite results are often reached. In a Pennsylvania case, two loaded pistols were found under the seat within reach of the defendant, but they were held not to be on the person, while in a New Jersey case involving similar facts, the pistol found under the seat was held to be about the person, therefore, a violation of the New Jersey statute.

Where a pistol or other deadly weapon is found lying in open view on the car seat by the driver, it is about the person; however, it is not a violation because it is not concealed. But if the weapon is covered with clothes or the like, then it is concealed and readily accessible. The same is true if it is on the seat or immediately behind the driver on a shelf as in a coupe.

If the weapon is on the floor of the front seat in a handbag or partially covered up by the defendant's feet, then it is about the person. But when a weapon is concealed on the back seat or on the floor of the back seat and the defendant is in the front, it has been held by the Illinois court in People v. Niemoth, that the weapon is not about him within the meaning of the “readily accessible” test. The court said that the fact that it was not shown by the prosecution that the defendant could have obtained the weapon without moving from his seat was a determining factor.

In the Niemoth case, the court apparently decided that it was necessary for the defendant to alter his position materially in order to have ready access to the weapon. It will be remembered that this is a part of the “readily accessible” test, i.e., that the weapon be reached without materially altering one’s position. An interesting problem arises as to how much movement is necessary to alter materially one’s position, particularly in connection with weapons in glove compartments of vehicles.

The Kentucky Court of Appeals until recently had not passed on the question of whether or not a gun in an unlocked glove compartment is about the person. But it had been decided that a gun in a locked compartment when the key is in the ignition was not a viola-

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30 Ibid.
32 Hampton v. Commonwealth, 257 Ky. 626, 78 S.W. 2d 748 (1934).
34 Clark v. City of Jackson, 155 Miss. 668, 124 So. 807 (1929).
35 People v. Niemoth, 322 Ill. 51, 152 N.E. 537 (1926).
tion of the statute. In Williams v. Commonwealth, decided late in 1953, the court held that the defendant driver was not guilty where a pistol was found in the unlocked glove compartment of his car by the arresting officers. At the time the accused was seated on the driver's side of the front seat "under the wheel." The decision turned on the fact that the defendant would have had to appreciably or materially change his position in order to reach the weapon. The "appreciable change" idea was borrowed from People v. Liss, a 1950 Illinois case, where it was held that a gun was not about the driver of the car when it was found beneath the middle of the front seat, six inches back under the seat on the floor.

Considering the slight change necessary for one in the driver's seat to reach the glove compartment it may be strongly contended that the Kentucky case reached the wrong decision. Since most of these compartments are equipped with push button latches, it is an easy matter to open the compartment and reach into it in a matter of seconds. The fact that the driver must extend his arm to the compartment and lean slightly in that direction should not be controlling. Is it not true that some movement must be made even to obtain a gun concealed on the person? And is it not also true that a pistol concealed in the glove compartment may be obtained as quickly in most cases as one concealed on the person? The obvious answers suggest that the legislature has taken away the privilege of carrying a concealed weapon and the court has given it back, at least when a person is driving a car.

Not only is such a result an impediment to law enforcement by lessening the effectiveness of the statute in regard to its original purpose, but it also may provide the means whereby a pistol may fall into the wrong hands and be used for an unlawful purpose. Previously in Kentucky, those who kept guns in their cars in the glove compartment were required to keep it locked or else be charged with violation of the statute. Now that this requirement has been lifted, many careless individuals will not lock the compartment when their car is unattended, leaving a lethal weapon an easy target for the not uncommon thief who preys on unattended cars. It is a known fact that a stolen pistol is an article of prize "swag" among the lawless element.

D. The Element of Intent

In completing a discussion of the essential elements of the crime, something must be said of the requisite intent necessary to commit

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37 261 S.W. 2d 807 (Ky. 1953).
38 406 Ill. 419, 94 N.E. 2d 320 (1950).
the prohibited act. Most statutes make no mention of intent along with the other elements, i.e., (1) carrying, (2) concealed, (3) deadly weapon, and (4) on or about.

It is sufficient to say that the interpretation of most statutes making no mention of intent has required only that there be an intent to conceal the weapon. The fact that the person carrying it has no intent or motive to use it unlawfully is immaterial. It is often said that the gist of the offense is carrying the weapon concealed on the person regardless of any unlawful purpose. The purpose of the statute, which is not to forbid a carrying for use, but to prevent the opportunity to use it arising from its concealment must be kept in mind.

It is to be noted in connection with the element of intent that there are a few statutes which expressly provide that there must be an intent to injure or harm. Naturally in these states the intent necessary for a conviction must conform with the statutory requirement. Along these same lines, there are also decisions which require that an intent other than merely to conceal must be shown although the statute contains no such requirement. However, it is believed that in these states, the judiciary exceeds its bounds by reading words into the statutes which are not present. In a number of other jurisdictions, the purpose for which the weapon is carried may be of a kind permitted by the particular state statute such as for purposes of repair, sale, or moving from one abode or one business to another. There is, of course, no crime if the intent is to carry for an authorized purpose.

E. EXCEPTIONS TO LIABILITY

In all the statutes in this country exceptions to operation of the prohibition are found. Two of the more generally recognized exceptions involve peace officers and licensees. Peace officers and those of similar occupations are usually permitted the exception only when they are in the exercise of their official duty; however, this is not much of a restriction on the exception since a policeman may at practically any time conveniently find himself in the exercise of his duty, or traveling to or from the place of performance of his duty. He is also limited in that the exception usually applies only in the

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43 For example see Wash. Rev. Code sec. 9, 41.060 (1951).
44 People v. Boa, 143 Ill. App. 556 (1908).
45 Wallace v. Commonwealth, 197 Ky. 233, 246 S.W. 466 (1923).
area in which he has jurisdiction, or when on official business outside his jurisdiction. But since those who enforce the law are fellow policemen, this qualification may often be overlooked.

Many states, along with the designated exceptions, make it possible for persons with good reasons to obtain permits or licenses to carry concealed weapons. The authority to issue the licenses usually rests with the town aldermen, mayor, police chief or other town official or commission. One statute requires that the person desiring to carry a deadly weapon concealed need only obtain the written consent of a peace officer to exempt him from the statute. It can readily be seen that unless an impartial board is set up which has to follow rigid standards in deciding whether or not to issue a license, the basis for issuing a license may be the applicant's political connections, rather than a meritorious reason. However, a properly organized board established for the purposes of granting these permits could perform a valuable public service. Not only would it serve those who actually need to carry a weapon but it would also serve as a local registration point for firearms for which permits are issued, and also as a registry of the names of known carriers of firearms. Such readily available information might at times be invaluable in aiding various police investigations.

Other notable exceptions extend to certain federal officers, members of the armed services on certain occasions, bank and express messengers, night watchmen, travelers, state militia on duty and persons threatened with attack.

Exceptions dealing with the place where a weapon may be carried are also often found in the statutes. The most common exception allows a person to carry a concealed weapon upon his home premises or at his place of business, but when no exception as to place is mentioned, those upon their own premises are subjected to a violation of the statute. It often comes as quite a shock when one learns that he cannot carry a gun hidden in his pocket in his own house without violating the statute, but in most states, as in Kentucky, that is the law.

F. Penalties

The penalties provided for violation of the statutes vary as much as do the statutes themselves. In one state a person may be fined only $100.00 for the offense, while in a neighboring state, he may be

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"73 A.L.R. 845-847 (1931).
"7 UTAH CODE ANN. tit. 103, sec. 2-4 (1943).
"For example, see IND. STAT. ANN. sec. 10-4737 (Burns 1942).
"Dunston v. State, 124 Ala. 89, 27 So. 333 (1900); 73 A.L.R. 839 (1931).
sentenced to several years in the state penitentiary. However, in most states the crime is a misdemeanor only. In some states, the first offense is a misdemeanor and subsequent violations are felonies. In Kentucky, the offense was changed in 1946 from a misdemeanor to a felony in the hope that with the attaching of a greater penalty more people would be deterred from carrying concealed weapons. Apparently, however, the new penalty is too severe because juries have been reluctant to find guilty one accused of the crime. Possibly in Kentucky, a state comprised of people either rightfully or wrongfully known for their gun-toting propensities, it is too much to ask of a jury to find a fellow citizen guilty of a crime which will subject him to a minimum of two years in the state penitentiary.

CONCLUSION

In concluding, it should be reiterated that the present weapon laws, because of their varied nature, present quite a problem. This is particularly true in regard to those persons who travel from state to state and carry weapons with them—usually guns—for protection, target shooting, hunting or other legitimate purposes. The problems which arise are not due solely to the law in connection with carrying concealed weapons but rather to carrying weapons in general.

In many states it is unlawful to carry a weapon in a vehicle without a license, and in some it is unlawful to carry a weapon at all without a license. In most of these states, no provision is made for non-residents and therefore it is not an authorized practice to recognize out-of-state licenses granted to persons permitting them to carry a concealed deadly weapon or to carry such a weapon in a car. But this is not to say that all non-residents found violating gun laws will be sentenced to serve a jail sentence, because numerous unheard of cases are disposed of by law enforcement officers, or by justices of the peace. If a reputable citizen is traveling through another state with a pistol in his car in violation of the state law but not of the law of his own state, the chances are that he will not be penalized if he is able to undergo a thorough investigation by an officer, which may include a time consuming check with the police of the citizen's home-state. On the other hand, he might have to pay the minimum fine and also lose his gun, the total of which could be quite expensive, without even considering the time lost. Possibly a solution to the problem involving non-residents would be to permit the law of the offender's domicile to govern.

The police and also the victims of hold-ups and armed assaults
complain that too many people carry guns, and they clamor for more strict laws; the average citizen, who knows of no reason why a person other than a policeman should carry a weapon, joins in and is swayed by the vast amount of publicity given the latest local shooting affray. On the other hand, sportsmen, hunters, and others, backed by such organizations as the National Rifle Association and the arms and ammunition companies, ask for more lenient legislation. The lawmakers, who are in the middle, oftentimes please no one. But this does not mean that there is not a happy medium between the advocates of both arguments. Some believe that the solution can be found in the Uniform Pistol Act.\textsuperscript{50} This act, which has been withdrawn for further study by the National Conference of Commissioners, provides briefly: (1) requirement of a license to carry a pistol either openly or concealed; (2) regulation of the sale of pistols; (3) denial to criminals and certain others the use of and the right to possess pistols; (4) exceptions to persons at home or at their fixed places of business; and (5) exceptions to certain classes of persons including peace officers, gun dealers, target shooters, etc. Whether this act is the answer to the problem of pistol control is not a matter for this discourse to decide, since it involves a number of problems which would require considerable discussion. But even if it is not the solution, certainly a state committee comprised of representatives from all interested groups could come forth with a suggested act that would substantially meet the needs of the people and still control the frequent criminal and careless uses of such weapons.

GARDNER L. TURNER

RES IPSA LOQUITUR AS APPLIED TO MULTIPLE DEFENDANTS

The existence of multiple defendants or instrumentalities which may have caused or contributed to an injury raises an interesting question of whether or not \textit{res ipsa loquitur} should apply in this type of case.

As usually employed, the doctrine of \textit{res ipsa loquitur} requires that: (1) the injury be one which ordinarily would not occur in the absence of someone's negligence; (2) the instrumentality causing the