

CCW Abuse: The Cover-up At The California State AG/DOJ's Offices

By Jim March and Nadja Adolf – May 22nd, 2002

We've spent a lot of time documenting the misdeeds of various local Police Departments and Sheriff's offices regard CCW permit issuance. If you're just joining in, the main web page cataloging the abuses is:

<http://www.ninehundred.com/~equalccw/expose.html>

Part of the process in getting a permit is that your fingerprints are run through the state Department Of Justice, which is under the direct oversight of the State Attorney General's office.

One nagging question has always been: "what does the California state DOJ and AG's offices know about the local abuses, and do they support such abuse?"

This report, for the first time ever, will detail deliberate misconduct by State Attorney General Lockyer and various minions inside the DOJ.

We accuse Attorney General Lockyer, Doug Smith, Chief of the DOJ's Bureau of Criminal Information and Analysis and an unknown number of others of taking deliberate steps to cover up equal protection misconduct in CCW issuance on the part of local agencies. They did this by deliberately flouting a California Supreme Court decision, having no legislative authority to do so.

This is a long story, so we're going to have to break it into a timeline.

NOTE: there are four key pages of scanned evidence at the end of this document.

TIMELINE

1982: In the case of Guillory vs. Gates, 731 F.2d 1379, the 9th Circuit rules that there's an equal protection principle involved in CCW issuance, and that plaintiff Guillory should be allowed to question Sheriff Gates (Orange County) about who else is getting permits, and why. The case was remanded down to district court for a new trial with that principle in mind. Rather than answer those questions, Gates folded and gave Guillory and his co-plaintiffs permits. Full text: <http://www.ninehundred.com/~equalccw/guillory.html>

1986: CBS news sues Sheriff Block of LA for CCW records. The California Supreme Court in CBS vs. Block (230 Cal.Rptr. 362) rules that CCW records are public and should be available under California's "Public Records Act" (our version of the FOIA). The applicant's name, dates of denial or application and/or renewal, city of residence, occupation and their "good cause for issuance statement" are declared public. In reference to the "good cause", the FULL details are to be made available (versus a boilerplate "for protection of life and property"). The court explained why it was doing this:

The interest of society in ensuring accountability is particularly strong where the discretion invested in a government official is unfettered, and only a select few are granted the special privilege. **Moreover, the degree of subjectivity involved in exercising the discretion cries out for public scrutiny.** For example, the sheriff of Orange County has issued over 400 licenses; in Los Angeles County only 35 licenses have been issued.

Ostensibly, both sheriffs are applying the same statutory criteria for granting or denying these licenses. The apparent discrepancy indicates that something may be amiss. **If the information on which the decision to grant can be kept from the public and the press, then there is no method by which the people can ever ascertain whether the law is being fairly and impartially applied.**

The full text of the case plus a summary is online here:

<http://www.ninehundred.com/~equalccw/cbsvblock.html>

1/1/99: AB2022 takes effect, mandating that the office of the Attorney General create a new state-standard CCW application form to replace local agency forms no later than mid-'99. Use of any other forms once the new forms are distributed is banned by the same state law, and the AG was given the ability to form an advisory committee made up of law enforcement officials. The specific law reads:

Penal Code 12051 (a)(3)(A) Applications for amendments to licenses, applications for licenses, amendments to licenses, and licenses shall be uniform throughout the state, upon forms to be prescribed by the Attorney General. The Attorney General shall convene a committee composed of one representative of the California State Sheriffs' Association, one representative of the California Police Chiefs' Association, and one representative of the Department of Justice to develop a standard application form for licenses. The application shall include a section summarizing the statutory provisions of state law that result in the automatic denial of a license. The Attorney General shall adopt and implement this standard application form for licenses on or before July 1, 1999.

At this time, all local CCW application forms had the applicant write in their “good cause for issuance” statement.

February '99: Attorney Chuck Michel files a Public Records Act Request on CCW “raw data” with all 58 Sheriffs and 150 police departments, as part of a study on CCW practices commissioned by Assemblyman Rod Wright (D-Compton). The PRAR specifically asks for “good cause data”, and cites the 1986 California Supreme Court case of CBS vs. Block 230 Cal.Rptr. 362 as precedent for release of the data.

3/15/99: Contra Costa County gun rights activist Jim March files suit against Sheriff Warren Rupf in State Superior Court (first lawsuit), alleging equal protection violations and other misdeeds in the handling of CCW permits. (This case caused a change of procedure requiring Rupf to allow CCW applicants to apply for CCW “on paper” versus being denied verbally as was prior practice in that jurisdiction.)

April of '99: AG Lockyer convenes a CCW advisory committee that includes Sheriff Rupf of Contra Costa, who had a clear conflict of interest due to being sued in this area of law. Other members include PD Chief Larry Todd of Los Gatos, known for anti-self-defense activism (and like Rupf, a recipient of Chuck Michel's PRAR) and the Sheriff of Stanislaus County, also a PRAR recipient.

Late June of '99: the new CCW application form is released, and remains unchanged to present. In a departure from all prior local agency forms that the authors are aware of (and we've seen dozens), applicants are ordered NOT to write in their “good cause for issuance” data. Instead, they fill out sections one through five of the 19 page form packet containing personal identifying information only. Later sections are filled out by a sworn law enforcement officer who “takes the applicant's dictation” on matters such as “good cause”, writing that and other data into “Section 7” of the forms, which is subtitled “Investigator's Notes”. Instructions to this effect (for the applicant's benefit) are included in the application packet.

The final CCW application packet (still in effect, unchanged since mid-'99) is available for download here:

<http://www.ninehundred.com/~equalccw/appform.html>

Pay particular attention to the bottom of page 2 under “Important Instructions” (centered, italicized and underlined):

- Fill out, read, and sign Sections 1 through 5, as directed. Use additional pages if more space is required.
- Sections 6, 7, and 8 must be completed in the presence of an official of the licensing agency.
- Review Section 7 and be prepared to answer these questions orally. Do not write anything in Section 7 unless specifically directed to do so by the licensing agency.

Section 7 is subtitled “Investigator’s Notes” – and it contains the “good cause” information as written in by a top cop or his designee as dictated by the applicant.

7/20/99: Unknown persons within the DOJ release an official bulletin (number 99-19-BCIA) to all law enforcement agencies statewide, with instructions on use of the new CCW forms. It contains explicit instructions to put all data NOT to be released to the public via Public Records Act into “Section 7” of the form, which was described as segregated and organized for this purpose, to maintain confidentiality under the PRA (Gov’t Code 6250-6270).

Towards the bottom of page one we see this:

Concerns have been raised regarding the potential disclosure of certain applicant information listed on the standard CCW application should a request be made pursuant to the Public Records Act ([California] Government Code section 6250 et. Seq.). To address these concerns, the standardized CCW application has been organized in a manner that segregates confidential, non-disclosable information about the applicant. Confidential information should be entered in Section 7 of the application.

Memo 99-19-BCIA was signed by Doug Smith, Chief of the DOJ’s Bureau of Criminal Information and Analysis. Below that is “For Bill Lockyer, Attorney General”.

It can be viewed in it’s original form here: among the scanned pages at the end of this Acrobat file.

Government Code 6254 is part of the Public Records Act, and shows what these clowns were up to:

Except as provided in Sections 6254.7 and 6254.13, nothing in this chapter shall be construed to require disclosure of records that are any of the following:

...

(f) Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, and any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes...

In other words, “police investigator’s notes” are exempt from PRAR disclosure. But CCW “good cause data” was **artificially** rendered such by a tortured change to the CCW application process that was utterly unnecessary – having people write in their “good cause” has always been good enough. The sole point here was an end-run around the California Supreme Court.

Sometime in late ‘99/2000: Chief Larry Todd of Los Gatos answers Chuck Michel’s PRAR request with approximately 900 pages worth of “stuff”. We don’t know how else to describe it – Todd took **everything**

in his files that was remotely gun-related and “dumped it” on poor Chuck. The file was almost a foot thick. This was all the more remarkable given that *Chief Todd had never once issued a single CCW permit, and apparently planned on never doing so.* The contents included grabber propaganda of a dozen types, pages showing Todd’s lobbying on gun control, and a single gem: preliminary copies of the new state-standard application form and the roster of people involved in the forms creation process.

Chuck Michel’s office heard rumors that other agencies he’d hit with PRARs were being urged to also try this “paper overload tactic” to raise Chuck’s copying fees. None of the agencies took it quite to the height of madness Larry Todd hit.

Various times since: on at least two occasions, Sheriff Laurie Smith of Santa Clara County has refused to release “good cause data” to investigators using the Public Records Act, including Chuck Michel, on the grounds that “the DOJ no longer deems these records releasable to the public”.

RKBA activist Nadja Adolf tried to obtain the CCW records from Santa Clara County, and obtained this interesting memo:

The key is their answer to “Category Five, “complete good cause data”:

This information is documented within that part of the individual's files which is not subject to disclosure. The California Department of Justice, which received a legislative mandate in 1999 to standardize the various CCW forms and application processes, has determined this information to be confidential.

First, this isn’t entirely correct: it was the AG’s office that received the mandate to standardize the forms, but nothing was said of “processes”.

Regardless: Nadja’s digging has exposed what is really going on here. If it wasn't for the memos she recieved, this entire issue would be theoretical.

The memo in it’s original form is scanned and attached to the end of this document.

The memo to Nadja from the Santa Clara Sheriff’s office continues later:

The Sheriff’s cost under the PRA is 35 cents per copy. We estimate that there are approximately 2,084 pages of documents which contain the information you have requested in #2 [names of applicants], #3 [dates of application/renewal/issuance/denial] and #6 [city of residence]. Therefore, we request that you provide a check, payable to the County of Santa Clara, in the amount of \$729.40. If you desire to narrow the timeframe, the corresponding number of pages to be copied, and the copy charge will decrease.

Does this look familiar? Note that as of early ’99, Sheriff Smith partially answered Chuck Michel’s PRAR with a database printout of 167 names, on about 12 pages or so, with no “good cause data” (same excuse as here). So there’s no way in HECK the info Nadja is requesting will run over 2,000 pages.

Maybe this will help: Los Gatos is within Santa Clara County. PD Chief Larry Todd of “Lost Gatos” is a good friend of Sheriff Laurie Smith.

In other words, Larry showed Laurie both of his favorite games to dodge a PRAR request: the “paperwork flood” game and the rigging of the PRAR forms Todd himself had a hand in.

Conclusions:

So what does it all mean?

Knowing that gross CCW misconduct exists in California's CCW system, a group of people within law enforcement and the DOJ "rigged" the new state-standard CCW application forms to specifically sidestep the California Supreme Court in *CBS vs. Block*. They had no legislative authority to do what they did. They dangsure didn't have the right to sidestep the California Supreme Court *in secret*.

This is BAD, folks. When the entire law enforcement community, right up to the top cop in the entire state (Lockyer) engages in a criminal conspiracy, it's about as bad as it gets.

Jim March was able to speak briefly with Randy Rossi on this subject. Rossi is the head of the DOJ's firearms division. But he wasn't involved in the CCW forms creation process, and had no knowledge of any of this. In part, he's one of the key people this report is written for. According to NRA staff in Sacramento, Rossi is one of the more reasonable people at the DOJ, which is probably why this process was run completely separate from his office: fear that Rossi might not play along? It's Rossi's department that handles the DOJ's role in the background check part of the process, so Rossi's being cut out is highly unusual.

In any case: game over. Bad show, chaps. Every time some crappy piece of gun control that DOJ administers comes along, people like Rossi visit gun clubs and NRA meetings explaining that they only enforce the law, and what's happening isn't their fault. Not this time! This is criminal conspiracy to screw over gun owners, run right out of the DOJ's office in a process that the AG was supposed to have oversight over, per state law!

Oh yes, one other thing: this is going public because we've figured out exactly which forum to use it in, and in that forum it won't matter that we went public first.

Jim March

Nadja Adolf

May-17-01 13:37

Bill Lockyer, Attorney General

California Department of Justice DIVISION OF CRIMINAL JUSTICE INFORMATION SERVICES Nick L. Dedier, Director		INFORMATION BULLETIN	
Subject: NEW STANDARD APPLICATION FOR CARRY CONCEALED WEAPON (CCW) LICENSE		No.: 99-19-BCIA Date: 7/20/99	For further information contact: Firearms Program (916) 227-3703

TO: ALL CHIEFS OF POLICE AND SHERIFFS

The purpose of this Information Bulletin is to implement the new Department of Justice (DOJ) Standard Application for License to Carry a Concealed Weapon (CCW). A camera-ready master of this new standardized CCW application and a supply of the revised CCW License and the Modification of License forms are enclosed.

Please refer to Information Bulletin No. 98-27-BCIA dated December 3, 1998, and Information Bulletin No. 98-30-BCIA dated December 24, 1998. These previous Information Bulletins provided detailed information on the changes to the CCW laws which became effective January 1, 1999.

Standard CCW Application

As specified by Assembly Bill (AB) 2022 (Chapter 910, Statutes of 1998), an Advisory Committee established by the Attorney General developed the enclosed new standardized CCW application. The standardized CCW application has been approved by the Attorney General for immediate use. As dictated by AB 2022, no other application form may be used after June 30, 1999.

Pursuant to Penal Code section 12051(a)(3)(C), an applicant shall not be required to complete any additional application or form for a license, or to provide any information other than that necessary to complete the standardized CCW application form except to clarify or interpret information provided by the applicant on the standardized CCW application form. However, it is still within your discretion to require an applicant to answer any particular question on the application. Furthermore, while this new standardized CCW application includes certain CCW license conditions and restrictions, it is still within your discretion to impose any particular condition(s) or restriction(s) on a license issued by your agency.

Concerns have been raised regarding the potential disclosure of certain applicant information listed on the standardized CCW application should a request be made pursuant to the Public Records Act (Government Code section 6250 et seq.). To address these concerns, the standardized CCW application has been organized in a manner that segregates confidential, non-disclosable information about the applicant. Confidential information should be entered in Section 7 of the application.

The enclosed camera-ready master copy of the standardized CCW application may be reproduced for distribution to CCW applicants according to your agency's needs. However, no changes or additions to the form or its content are permitted per Penal Code section 12051(a)(3)(C).

May-17-01 13:37

Information Bulletin
New Standardized Application for
License to Carry a Concealed Weapon (CCW)
Page 2

Revised CCW License & Modification of License Forms

The CCW License form has been revised based upon the recommendations of the CCW Advisory Committee. The new form number is BCIA 4501 (4/99). The revised form was modified to be compatible with standard sized laminating materials and formats and also includes sections to indicate the term and type of license.

The CCW Modification of License form has also been revised. The new form number is BCIA 4502 (4/99). Changes to this form include the addition of language reflecting the new license categories.

Aside from any changes prescribed in Information Bulletins Nos. 98-27-BCIA and 98-30-BCIA, there are no changes in the procedure for submitting these forms to DOJ. Please destroy any inventories of the old CCW License and Modification of License forms.

Requisition of CCW Forms

We have enclosed a supply of CCW License and Modification of License forms based on the number of CCW Licenses issued by your agency in 1998. Additional supplies of these forms can be obtained by calling the Firearms Program at (916) 227-3694. Feel free to use photocopies of the Modification of License form and the standardized CCW application package. The standardized CCW application package is also available on diskette or by e-mail upon request (WordPerfect 8 format). If your agency does not issue CCW licenses, you may return the forms to DOJ.

If you have any questions or have not previously received Information Bulletin Nos. 98-27-BCIA or 98-30-BCIA which discussed new changes to CCW laws, please contact the Firearms Program at (916) 227-3703.

Sincerely,



DOUG SMITH, Chief
Bureau of Criminal Information
and Analysis

For BILL LOCKYER
Attorney General

Enclosures

County of Santa Clara

Office of the Sheriff

55 West Younger Avenue
San Jose, California 95110-1721
(408) 299-2101



Laurie Smith
Sheriff

July 24, 2001

Ms. Nadja Adolf

Address deleted for privacy

Dear Ms. Adolf:

This letter is in response to your request under the California Public Records Act (PRA) for information regarding CCWs.

The PRA makes certain existing records public. However, the PRA does not require an agency to create a record or a list or a compilation. Most of your categories listed (except #1, #5, and #8) are not seeking disclosure of a specified identifiable document but instead seeking this agency to create a list or a compilation.

Some of the information you request is contained in identifiable documents which we can make available under the PRA and some of the information is contained in documents which we believe are not subject to disclosure under the PRA. Specifically:

Category #1: local procedures. The document entitled "Procedural information for permits for the carrying of concealed weapons" revised October 30, 2000 can be provided

Category #2: names of each issued, denied, and pending applicant with any aliases, maiden names or other names used. This information is documented within that part of the individual's files which can be provided.

Category #3: dates of the application, denial, issuance, and/or renewal for each issued, denied or pending applicant. The dates of the application and the denial, if any, is documented within that part of the individual's files which can be provided. The other information sought is documented within that part of the individual's files which is not subject to disclosure

Category #4: provide the exact "good cause data" for each issued, denied or pending

applicant. This information is documented within that part of the individual's files which is not subject to disclosure. The California Department of Justice, which received a legislative mandate in 1999 to standardize the various CCW forms and application processes, has determined this information to be confidential.

Category #5: provide copies of any audiotape recordings of personal interviews with applicants. The Office of the Sheriff has no such recordings.

Category #6: provide the city of residence of each issued, denied and pending applicant (note if applicant lives in unincorporated area). This information is documented within that part of the individual's files which can be provided.

Category #7: if any issued applicant has time/place/circumstance restrictions, please provide. This information is documented within that part of the individual's files which is not subject to disclosure. The California Department of Justice, which received a legislative mandate in 1999 to standardize the various CCW forms and application processes, has determined this information to be confidential.

Category #8: provide the full text of any agreement with any other law enforcement agency regarding CCWs. The Office of the Sheriff has no documents responsive to this request.

Category #9: provide the name of any political, social and/or charitable organization whose membership holds more than 25% of the total CCW permits issued by your agency. The Office of the Sheriff has no documents responsive to this request nor is the information contained in the individual's files.

Category #10: if this request is being answered by a Sheriff's department, please list the incorporated municipalities within the county that have local patrol contracts with the Sheriff's office. Incorporated municipalities are Saratoga, Los Altos, and Cupertino.

The Sheriff's cost under the PRA is 35 cents per copy. We estimate that there are approximately 2,084 pages of documents which contain the information you have requested in #2, #3 and #6. Therefore, we request that you provide a check, payable to The County of Santa Clara, in the amount of \$729.40. If you desire to narrow your timeframe, the corresponding number of pages to be copied, and the copy charge will decrease.

Please contact me if you have any questions or concerns.

Sincerely,



Mark Eastus, Sergeant
Santa Clara County