

# LAW WISE



PUBLISHED BY THE KANSAS BAR ASSOCIATION

NOVEMBER 2011

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Greetings from the Kansas Supreme Court and the Kansas Bar Association (KBA). Welcome to this edition of *Law Wise* and the third edition of the 2011-2012 school year.

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## CALENDAR OF EVENTS

<b>January 29, 2012</b>	Kansas Day
<b>March 24, 2012</b>	Regional Mock Trial Competition
<b>March 31, 2012</b>	State Mock Trial
<b>May 3-6, 2012</b>	National Mock Trial Competition (Albuquerque, N.M.)
<b>June 14, 2012</b>	Flag Day



## Welcome

This month's *Law Wise* continues our theme on provisions of the Bill of Rights (the first Ten Amendments to the United States Constitution) of particular interest to students. We examined the first amendment last month. This month, we look at the second amendment, as well as various federal and Kansas laws relating to weapons and schools.

## A SECOND AMENDMENT UPDATE

The Second Amendment states: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

Before the Supreme Court's 2008 decision in *District of Columbia v. Heller*,<sup>1</sup> courts had not stated what right the Second Amendment protected. The opposing theories were (1) an "individual rights" approach — that the Amendment protected individuals' rights to firearm ownership, possession, and transportation; and (2) a "states' rights" approach — that the Amendment only protected the right to keep and bear arms in connection with organized state militia units.<sup>2</sup> And it was generally believed that the Amendment was only a bar to federal action, not to state or municipal restraints.<sup>3</sup>

But the Supreme Court held in *Heller* that the Second Amendment protects an individual's right to possess a firearm unconnected with service in a militia, and to use that weapon for traditionally lawful purposes, such as self-defense within the home. This right applies not just to the federal government, but to states and municipalities as well. In *Heller*, the Court held that (1) the District of Columbia's total ban on handgun possession in the home amounted to a prohibition on an entire class of "arms" that Americans overwhelmingly chose for the lawful purpose of self-defense, and thus violated the Second Amendment; and (2) the District's requirement that any lawful firearm in the home be disassembled or bound by a trigger lock also violated the Second Amendment, because the law made it impossible for citizens to use arms for the core lawful purpose of self-defense. The Court reasoned that the Amendment's prefatory clause ("[a] well regulated Militia, being necessary to the security of a free State") announced the Amendment's purpose, but did not limit or expand the scope of the operative clause ("the right of the people to keep and bear Arms, shall not be infringed.") The prefatory clause's history comported with the Court's interpretation, because the prefatory clause stemmed from the Anti-Federalists' concern that the federal government would disarm the people in order to disable the citizens' militia, enabling a politicized standing army or a select militia to rule.

The Court distinguished *United States v. Miller*,<sup>4</sup> which upheld a statute requiring registration of sawed-off shotguns, because Miller limited the type of weapon to which the Second Amendment right applied to weapons in common use for lawful purposes.

Last year, in *McDonald v. Chicago*,<sup>5</sup> the Court struck down laws enacted by Chicago and the village of Oak Park effectively banning handgun possession by almost all private citizens, holding that the Fourteenth Amendment incorporated the Second Amendment right to keep and bear arms for the purpose of self-defense. The Court reasoned that this right is fundamental to the nation's scheme of ordered liberty, given that self-defense was a basic right recognized by many legal systems from ancient times to the present, and Heller held that individual self-defense was "the central component" of the Second Amendment right. Also, a survey of the contemporaneous history also demonstrated clearly that the Fourteenth Amendment's Framers and ratifiers counted the right to keep and bear arms among those fundamental rights necessary to the Nation's system of ordered liberty. ■

## ENDNOTES

1. 554 U.S. \_\_\_\_ (2008).
2. A sampling of the diverse literature in which the same historical, linguistic, and case law background is the basis for strikingly different conclusions includes: Staff of Subcomm. on the Constitution, Senate Comm. on the Judiciary, 97th Congress, 2d Sess., *The Right to Keep and Bear Arms* (Comm. Print 1982); Don B. Kates, *Handgun Prohibition and the Original Meaning of the Second Amendment* (1984); *Gun Control and the Constitution: Sources and Explorations on the Second Amendment* (Robert J. Cottrol, ed. 1993); Stephen P. Halbrook, *That Every Man Be Armed: The Evolution of a Constitutional Right* (1984); Symposium, *Gun Control*, 49 *Law & Contemp. Probs.* 1 (1986); Sanford Levinson, *The Embarrassing Second Amendment*, 99 *Yale L.J.* 637 (1989).
3. See *Presser v. Illinois*, 116 U.S. 252, 265 (1886); see also *Miller v. Texas*, 153 U.S. 535 (1894); *Robertson v. Baldwin*, 165 U.S. 275, 281-282 (1897).
4. 307 U.S. 174 (1939).
5. No. 08-1521 (June 28, 2010).

Adapted from [goo.gl/uXNNG](http://goo.gl/uXNNG)

## LIMITS ON THE SECOND AMENDMENT: SCHOOLS

**Although individuals generally have a right to possess guns, that right is subject to exceptions.** In *Heller*, the Supreme Court instructed that the Second Amendment right "is not unlimited." *Id.* at 626. In particular, the Court told us that "nothing in [its *Heller*] opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms." *Id.* at 626-27. Some of those laws are summarized below.

**Federal Gun-Free School Zones Act.** The Federal Gun-Free School Zones Act of 1990 was held unconstitutional in 1995 by the Supreme Court as outside the scope of Congress' commerce clause power. See *United States v. Lopez*, 514 U.S. 549 (1995). Congress later cured that problem by including a nexus to interstate commerce, and re-enacting the statute. See 18 U.S.C. 922(q). That statute currently prohibits the knowing possession of a firearm in a school zone. Exceptions include the possession of a firearm on private property not part of school grounds; the possession of a firearm by a licensee of the State;

and the possession of a firearm that that is not loaded and is in a locked container, or a locked firearms rack that is on a motor vehicle.

**Kansas Personal and Family Protection Act.** The Kansas concealed carry law permits persons to carry concealed firearms in certain locations, after they have been qualified and licensed to do so. But that law provides that no concealed carry license shall authorize the licensee to carry a concealed handgun into the building of: (10) any elementary or secondary school. KSA § 75-7c10(a)(10).

**Kansas Weapon-Free Schools Act.** Kansas law requires each board of education to adopt a written policy requiring the expulsion from school for a year of any pupil who possesses a weapon at school, on school property, or at a school supervised activity. An exception applies to the possession of weapons by pupils in connection with a weapons safety or weapons education course, and to the possession of weapons by pupils specifically authorized in writing by the chief administrative officer of the school. KSA § 72-89a02.

## Take a Field Trip!

Looking for a field trip idea? Interested in an interactive learning experience? Want to give your students a chance to meet with a federal judge? Need materials to help you teach about the courts?

Contact the U.S. District Court for the District of Kansas for help! We offer tours of our three courthouses and fun, timely, and interactive EDUCATIONAL programs designed for students of all ages.

Check out the program offerings at [www.uscourts.gov/outreach/index.html](http://www.uscourts.gov/outreach/index.html) and contact Neely Fedde, the Court's Public Outreach Specialist, at [neely\\_fedde@ksd.uscourts.gov](mailto:neely_fedde@ksd.uscourts.gov) or (913) 551-6692 for more information or to schedule a session in our Kansas City, Wichita, or Topeka courthouses or at your school.

## 2<sup>nd</sup> Amendment Lesson Plan: The Right to Bear Arms

Suggestion – revise this plan to focus upon the issues relating to firearms at schools in Kansas. Should a parent with a concealed carry permit be allowed to bring a gun on school grounds? To the football stadium? In the parking lot?

### OBJECTIVES

Students will

- use what they learned in the video to define gun rights and gun control;
- review the history of gun control legislation; and
- research arguments for gun control and gun rights and participate in a class debate.

### MATERIALS

Computer with Internet access

Poster board, markers, or other materials to create a display

### Procedures

1. Begin the lesson by defining “gun rights” and “gun control.” What do supporters on each side of the issue believe?
  - **Advocates of gun control** support stricter firearm laws: tougher background checks and longer waiting periods for those purchasing guns; mandatory child safety locks; a limit of one handgun purchase per month; and raising the legal age limit for ownership of guns to age 21 from the current age of 18. They believe these measures will curb the rise of gun-related violence.
  - **Advocates of gun rights** say such legislation would infringe on the constitutional rights of law-abiding citizens. The National Rifle Association, a prominent voice in the gun debate, says firearm-control measures are unnecessary if lawmakers would enforce current laws.

(Summaries above adapted from The Center for Responsive Politics ; see the Web site at <http://www.opensecrets.org/> .)

Review the history of gun control legislation in the United States, from the ratification of the Second Amendment to the Constitution (to protect militias) to the Brady Handgun Violence Prevention Act. For a timeline, visit the Web site below:

#### Milestones in Federal Gun Control Legislation

<http://www.infoplease.com/spot/guntime1.html>

Divide the class into two groups: Gun Control and Gun Rights. Explain that the class is going to participate in a debate, and the groups will defend opposing sides. To begin, each group should use the Web sites below to research and develop an argument for their assigned side of the issue.

#### Gun Rights

NRA Institute (see “Political/Legislative” section)

<http://www.nraila.org/Legislation/Federal/>

#### Gun Control

Brady Campaign: Facts and Issues

<http://www.bradycampaign.org/>

To help students prepare, tell students the rules of the debate:

- Each group will have five minutes to give an opening statement that should include statistics, quotes from sources, and other facts based on their research.
- Students are strongly encouraged to prepare visual presentations, such as posters with charts and graphs, to support their argument.
- After the opening statements, each group may ask two questions of the opposing side. (Remind students to try to anticipate questions-and their own responses-from the opposing side. Encourage students to explore Web sites for both sides of the issue.)
- Groups will take turns asking questions; give them one minute to ask a question and two minutes to answer.

Hold a class debate. Allow about 35 minutes for each side to present their argument, then ask and answer two questions. If time permits, allow students to ask and answer more questions.

As a class, summarize the debate. Write two columns on the board (“Gun Control” and “Gun Rights”), and ask students to list the most compelling arguments for either side. After the debate summary, ask students to share their feelings about gun laws. Do events such as the Columbine shooting and the September 11th terrorist attacks influence their opinions about the laws? If so, explain how.

### EVALUATION

Use the following three-point rubric to evaluate students’ work during this lesson.

- Three points: Students were highly engaged in class discussions; they prepared a comprehensive and thoughtful opening statement; they asked clear, challenging questions; and they gave answers based on several facts from their research.
- Two points: Students participated in class discussions; they created a somewhat comprehensive opening statement; they asked somewhat clear, challenging questions; and they gave answers based on some facts from their research.
- One point: Students participated minimally in class discussions; they created a simplistic opening statement; their questions were shallow or not well thought out; and their answers were unclear or simple and without basis in fact or research.

### VOCABULARY

#### Brady Handgun Violence Prevention Act

**Definition:** Passed in 1994, this act imposes a five-day waiting

period and background check before a licensed gun importer, manufacturer, or dealer can sell or deliver a handgun to an unlicensed individual; in 1998, a new background-check system allowed checks to be done over the phone or electronically.

**Context:** Also known as the Brady Bill, the Brady Handgun Violence Prevention Act was named after Jim Brady, the press secretary to President Ronald Reagan, who was shot and seriously wounded during an assassination attempt on the president.

### Gun rights

**Definition:** The belief that any legislation to curtail the use and sale of firearms is an infringement on Americans' constitutional rights.

**Context:** Some groups advocating gun rights believe that firearm-control measures are unnecessary if lawmakers would enforce current laws.

### Gun control

**Definition:** The belief that the United States needs stricter firearm laws, including tougher background checks

**Context:** Gun control advocates believe that tougher firearm laws will curb the rise of gun-related violence.

### Second Amendment

**Definition:** The Second Amendment to the U.S. Constitution states that "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

**Context:** The Second Amendment was ratified in 1791.

### STANDARDS

This lesson plan addresses the following standards from the National Council for the Social Studies:

V. Individuals, Groups, and Institutions

VI. Power, Authority, and Governance

### CREDITS

Joy Brewster, freelance education writer, editor, and consultant  
From <http://bit.ly/spSGEb>

## COURT EDUCATION VIDEO AVAILABLE

The Kansas Supreme Court has released a new educational video along with talking points on four court-related topics. The video, called Justice in Kansas, and the talking points may be accessed below.

**Justice in Kansas Video:** Published by the Kansas Supreme Court, produced in January 2009 and hosted by then-Chief Justice Robert E. Davis, the video provides information regarding the structure and function of the Kansas Judicial Branch. Copies of the video are available upon request to teachers or anyone interested in law-related education. Contact Ron Keefover, Education and Information Officer of the Office of Judicial Administration, Topeka, (785) 296-4872 to order. Video is approximately seven (7) minutes in length. Windows Media Player 9.0 or above is required. <http://bit.ly/kbaWMP>

#### Talking Points:

- Interesting facts regarding the Kansas Judicial System
- Types of courts
- Case statistics
- Jury service in Kansas
- About Kansas courts

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*The Kansas Bar Association Law-Related Education Clearinghouse Inventory catalog is available. To request a new copy, please call Kelsey Schrempp, KBA Public Services Manager, at (785) 234-5696 or email her at [kschrempp@ksbar.org](mailto:kschrempp@ksbar.org).*

## LAW-RELATED EDUCATION CLEARING HOUSE ... WHERE?

**This is no longer a mystery!** The Kansas Bar Association's Law-Related Clearinghouse is located in the Teachers College Resource Center, room #224 of Visser Hall, here on the campus of Emporia State University. Packed on the shelves are a wide variety of civics resources for Kansas educators. A brief scan of the collection shows that there are booklets, books, games and kits, mock trial simulations, videos, DVDs, and more.

So why is this collection so unknown? For me *that* is a huge mystery! Any time that I can find valuable materials in my content area, ready to use with students, I consider that a resource that I will call upon again and again. I think that this collection may have been overlooked in the search for effective materials for students because of the variety of other resources offered here at the Teachers College Resource Center. I have excellent reason to believe that this non-use will change! The Kansas Bar Association, steered by their Public Services Manager, Kelsey Schrempp, has put their valuable dollars to work for educators! New, timely audio-visual materials have been ordered and will soon invigorate this collection. Now, all you will need to do is be first in line to check out these brilliant new additions to the collection. The new additions will be available in mid December and some are listed in the above Clearinghouse Resources.

The hours at the Center are 9 a.m. to 6 p.m. Monday through Thursday, and 9 a.m. through 5 p.m. on Friday. For more information, call (620) 341-5292 or email me at [jromeise@emporia.edu](mailto:jromeise@emporia.edu).

Janice Romeiser  
Director Teachers College Resource Center/Instructional Materials Center  
Emporia State University

## TERRIFIC TECHNOLOGY FOR TEACHERS



Check out these great websites ...

**National Constitution Center: Lesson Plans – 2nd Amendment: The Right to Bear Arms**  
<http://bit.ly/tBRNhC>

**American History Teachers' Collaborative**  
<http://bit.ly/rD9ZBb>

**The Second Amendment Tested. Matt Buckles, Urbana High School Social Studies Teacher. AHTC Constitutional Convention Summer Institute.**  
<http://bit.ly/tsdYKH>

**The Law Library of Congress site has a brief history and background on the second amendment, as well as suggestions of substantial books and articles on the subject.**  
<http://1.usa.gov/tYscWX>

**Newspaper articles (one from the Wichita Eagle and the other from the Capital Journal) on recent Kansas legislation regarding concealed-carry laws for schools.**  
<http://bit.ly/rDQlbG> and <http://bit.ly/uelfsQ>

*Law Wise* is published by the Kansas Bar Association during the school year. The Kansas Bar Foundation, with Interest on Lawyers' Trust Accounts funding, provides support for this publication. It is published free, on request, for teachers or anyone interested in law-related education and is edited by Kathryn Gardner, Topeka. For further information about any projects or articles, contact Kathryn Gardner, Topeka, (785) 338-5366; or Kelsey Schrempp, manager of public services of the Kansas Bar Association, (785) 234-5696. *Law Wise* is published by the Kansas Bar Association, 1200 SW Harrison, Topeka, KS 66612-1806.