Executive Summary Report

PUBLIC FORUM:

“MISSISSIPPI’S CASTLE DOCTRINE AND OPEN CARRY GUN LAWS”
Is there a need for a continuing discussion?
January 29, 2014

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IOG Approved Activity and Purpose

The Institute of Government commissioned associates Terry Wallace and Jim Mozingo to perform research and organize a public forum to discuss Mississippi’s Castle Doctrine and Open Carry Gun Laws and to determine if there is a need for continuing public discussion on the subject.

Process - Design

Numerous public officials (sheriffs, police chiefs, district attorneys, jurists, et al) and private citizens (criminal defense lawyers, law professors, 2nd Amendment advocates, ministers et al) were canvassed by the institute associates as to their positions on these laws and invited to attend and participate in a public forum on the Jackson State University campus on the evening of January 29, 2014 in the auditorium at the Jackson State Student Center on the Jackson State campus. (A list of the Forum participants is attached as Addendum A).

In addition, the institute associates researched the applicable and related statutory law of the State of Mississippi, current proposed bills pending before the Mississippi legislature, as well as publicly released studies regarding similar laws as those under study and public comment from around the country.
on this and related legislation and its workability. Associate Jim Mozingo presented a summary of the initial research at the beginning of the Forum.

Discussion

I. Trayvon Martin - Florida - Stand Your Ground Laws.

The national news has been filled with the factual news about the fatal shooting of Trayvon Martin by George Zimmerman on February 26, 2012. Almost two (2) years later, we are still discussing, lamenting, trying to understand, and trying to make adequate policies to protect individuals, the civil populace, and those who follow the 2nd Amendment with zeal and focus. This shooting was one of the first to bring into the cross-hairs, if you will, the "stand your ground" self-defense law which was passed by the Florida legislature in 2005.

Essentially Florida's law allows an individual to use deadly force when he or she feels that he or she is at risk of great bodily harm in a confrontation. This legislation does not require the individual who perceives a risk to retreat. This legislation changed the former law which required of the individual who perceives a risk to retreat using every reasonable means before resorting to deadly force. The stand your ground laws fall into a genre of laws that are commonly referred to as justifiable homicide.

II. Mississippi’s Castle Doctrine.

Mississippi does not have a stand your ground law, per se. Mississippi does have a Castle Doctrine Law, which differs from the stand your ground notion in that it limits situations in which deadly force can be utilized and the shooter's actions remain defined as justifiable homicide.

The Castle Doctrine laws come from the English common law that a man's home is his castle and that he has no duty to retreat and can defend his home with lethal force against an intruder. Mississippi's law, like many other similar laws in the nation, extends the principal to the individual's vehicle and place of business. Within these settings (home, vehicle and business), Mississippian's who are confronted by an intruder may attack the intruder, rather than first attempting to retreat.

III. Some Reported Statistics - Effect of Stand Your Ground Laws

Florida's justifiable homicide rate for the years prior to the stand your ground legislation (2000-2004) averaged 12 per year; from 2005 to 2010, it averaged 35 per year.

A study released in September of 2013, sponsored by the Mayors Against Illegal Guns, the National Urban League and Vote Vets indicated that in the 22 states that adopted stand your ground laws between 2005 and 2007, there was a 53% increase in justifiable homicide, while in states without a stand your ground law, there was an average 5% decrease in justifiable homicide. The study's conclusion: "Stand your ground laws have undermined public safety and tied the hands of law enforcement officials."

The same Reuters article cited a 2012 Texas A&M study which found stand your grounds law made no dent in the rate of robberies, burglaries and aggravated assaults, despite the contention by advocates of stand your ground that it could and would deter serious crime.

IV. Mississippi's Legislation

Mississippi's Castle Doctrine Law, a reasonable and well-crafted piece of legislation, was introduced by former Senator Charlie Ross, a practicing attorney in Jackson. Many 2nd Amendment advocates consider this a stand your ground law, but it is not. It does not offer a defense to the shooter unless the perpetrator invades the shooter's home, vehicle or business.
An article in the *Wall Street Journal* reports that Mississippi's legislation, passed in 2006, had little long-term effect on the rate of justifiable homicides in Mississippi. There was 0.1% per 100,000 in population in 2001. With a brief hiatus in 2004, 2006 and 2007, when no justifiable homicides were reported, between 2001 and 2010, the ratio has always remained 0.1% per 100,000 or less.

Another study published by the *Wall Street Journal* indicates that when our Mississippi legislation was enacted in 2006, the previous year the rate of justifiable homicides was .034% and in 2010, the rate was precisely the same. This study concludes that there is no clear statistical evidence that determines whether the justifiable killings are additional deaths that wouldn't have happened without the stand your ground laws, or if they would have occurred anyway, but would have been reclassified.

V. Open Carry - 2013/2014

Recent action in the 2013 regular session of the Mississippi Legislature redefining a concealed weapon may have raised more questions than it clarified. House Bill 2 was passed in order to bring clarification to the definition of a concealed weapon. The bill defines concealed weapons as "hidden or obscured from common observation" and clarifies that a weapon is a concealed weapon if it is in a holster or other carry device, even if a portion of the weapon or holster is partially visible. The bill also notes that Mississippi's permit and licensing requirements for concealed weapons do not apply to unconcealed weapons. Thus, the bill has been tagged by many as authorization for open carry of weapons in Mississippi. The unintended consequences of this clarification are to bring to a rolling boil all sorts of issues associated with handguns and other dangerous weapons in Mississippi. Gun control advocates are opposed to the law. Second Amendment aficionados are in favor of it. The run-of-the-mill citizen is confused, if he's keeping up with the debate at all, and law enforcement is confounded.

The author of House Bill 2, Representative Andy Gipson (GOP-Braxton) says that this legislation only clarified the definition of a concealed weapon and did nothing to change any aspect of Mississippi law that deals with weapons that are not concealed. Gipson was apparently referring to Article 3, Section 12 of the Mississippi Constitution, which states, "The right of every citizen to keep and bear arms in defense of his home, person or property, or in aid of the civil power when thereto legally summoned, shall not be called into question, but the legislature may regulate or forbid carrying concealed weapons."

According to the *NRA-ILA* website, Gipson, in sponsoring House Bill 2, which it claims as NRA-backed legislation, was attempting to make "important changes to vague and problematic language in Mississippi's carry laws." The article goes further to suggest that the legislation addresses a recent opinion by the Attorney General "that has caused additional confusion and concern among carry permit holders and Second Amendment advocates." And through all of this, Representative Gipson reminds us that a person carrying a gun openly in public is still prohibited from showing or using the weapon in a threatening manner.

Representative Gipson's most recent foray into gun legislation (2014) is House Bill 314, also known as "Gipson's bill", which would allow gun owners to sue city officials who ban guns in public places. Apparently the Attorney General would be given 30 days to make a determination of whether the city ban violates Mississippi's gun laws. If it is determined to do so, the city would be given 30 days to comply or face a lawsuit. House Bill 314 is quite broad (possibly an understatement) and only Sections 3 and 4 of the proposed bill, which purport to amend Section 45-9-52, are applicable to this discussion. The proposed legislation seems to be far broader than just this description.

The "average Joe" in Mississippi (based on comments made in response to several blogs and news media articles or videos) seems to have no idea that many firearms advocates characterize
Mississippi as an "open carry" state. OpenCarry.org defines Mississippi as a "licensed open carry state" while the International Business Journal categorizes it as "open carry with restrictions" and a number of other sites call it an "anomalous open carry state", which, translated, seems to mean that Mississippi weapons laws may appear confusing to the onlooker.

VI. The Statutes

In order to grasp the whole issue, and associated confusion, an analysis of several items is in order in addition to Article 3, Section 12 of the Mississippi Constitution of 1890: Mississippi Code Annotated §45-9-101, §97-37-1, §45-9-51, et seq. and Attorney General's Opinion No. 2012-00248. Mississippi Code Annotated §97-37-1 describes weapons that a Mississippian cannot carry concealed in whole or in part, use or attempt to use against another person.¹

Mississippi Code Annotated §45-9-101 is the "carry permit" statute which directs that the Department of Public Safety shall issue a carry permit so long as the permit applicant qualifies. In order to qualify, an applicant must (1) be a resident of the state for at least 12 months immediately preceding the submission of the application (with some exceptions for military personnel, individuals holding a carry permit from another state, and retired law enforcement); (2) be 21 years of age or older; (3) does not suffer from a physical infirmity which would preclude safe handling of a weapon; (4) is not ineligible to possess a firearm by virtue of being convicted of a felony and not pardoned; (5) does not chronically or habitually abuse controlled substances; (6) does not chronically or habitually use alcoholic beverages; (7) desires to carry one of the weapons described in order to defend himself; (8) has not been adjudicated mentally incompetent; (9) has not been voluntarily or involuntarily committed to a mental institution or mental health treatment facility; (10) has not had adjudication of guilt withheld or imposition of sentence suspended on a felony unless three (3) years have passed on all conditions imposed by the sentencing court; (11) is not a fugitive from justice; (12) is not disqualified to possess or own a firearm based on federal law.

Of interest is sub-section (18) of the "carry permit" statute: "nothing in this section shall be construed to allow the open and unconcealed carrying of any stun gun or a deadly weapon as described in Section 97-37-1, Mississippi Code of 1972." Even if holding a carry permit, a licensee cannot carry a concealed weapon into (1) a "place of nuisance"²; (2) a law enforcement station, detention facility, or jail; (2) a courthouse or courtroom; a polling place; (3) a meeting place of the governing body of any governmental entity; (4) any meeting of the Legislature or a committee thereof; (4) any school, college or professional athletic event not related to firearms; (5) an establishment that is licensed to dispense alcoholic beverages, beer or light wines which are consumed on the premises; (6) schools; passenger terminals of the airport; (7) places of worship, or where the carrying of firearms is prohibited by federal law; or (8) if carried in a parade or demonstration for which a permit is required. Those carrying weapons for "legitimate weapon-related sports activity" are excepted from the permit requirement.

A business owner has an option of disallowing concealed weapons disallowed in any place in the discretion of the person or entity exercising control over the physical location of such place by the placing

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¹ The statute lists, "any bowie knife, dirk knife, butcher knife, switchblade knife, metallic knuckles, blackjack, slingshot, pistol, revolver, or any rifle with a barrel of less than sixteen (16) inches in length, or any shotgun with a barrel of less than eighteen (18) inches in length, machine gun or any fully automatic firearm or deadly weapon, or any muffler or silencer for any firearm, whether or not it is accompanied by a firearm"

² Section 95-3-1, Mississippi Code of 1972, defines a place of nuisance mean any place where lewdness, assignation or prostitution is conducted, permitted, continued or exists or any place where a controlled substance is unlawfully used, possessed, sold or delivered.
of a written notice clearly readable at a distance of not less than ten (10) feet that the "carrying of a pistol
or revolver is prohibited."

VIII. Prohibitions on Public Entities

Mississippi Code Annotated §45-9-51, et seq. prohibits counties and municipalities from adopting
ordinances restricting or requiring possession, transportation, sale, transfer or ownership of firearms or
ammunition or their components. Exceptions allow a county or municipality to require citizens or public
employees: (1) to be armed for personal or national defense, law enforcement, or other lawful purpose;
(2) to regulate discharge of a firearm or other weapon within the limits of the county or municipality; (3)
to regulate the carrying of a firearm at a public park or meeting of the government, a political rally,
parade or official political meeting or a non-firearm related school, college or professional athletic event;
and (4) to regulate the use of firearms in cases of insurrection, riots and natural disasters in which the city
finds such regulation necessary to protect the health and safety of the public.

IX. The AG's Opinion

On June 14, 2012 the Attorney General issued Opinion No. 2012-00248 concerning concealed
weapons. In summary, the Opinion notes that Mississippi law requires a permit holder to completely
cover his weapon in public by means of a shirt, jacket or other piece of clothing. The authority to legally
carry a pistol or revolver is derived from Section 45-9-101 of the Mississippi Code. This provision does
not authorize a person to carry a pistol "concealed in part", but requires that it be totally concealed.

Section 97-37-1 prohibits the carrying of listed weapons whether "concealed in whole or in part". Thus,
according to the Attorney General, it is illegal to carry the weapons described in Section 97-37-1(1)
without securing a license as provided in Section 45-9-101, which license authorizes the carrying of a
concealed pistol or revolver. The securing of the "enhanced" permit provided in Section 97-37-7 does not
abrogate the requirement that the weapons be carried totally concealed.

X. The Forum

Participants were asked to express their views and concerns about the Castle Doctrine Law and
about Mississippi’s Open Carry Law in a series of panels.

With regard to Open Carry private citizens, including law professors, students and attorneys,
generally expressed their support for Open Carry. Some felt that Open Carry prevented firearms from
being solely in the hands of criminals, and that, as a result, criminals’ expectations would be changed and
crime reduced. Others stressed that Open Carry was a personal right of all citizens arising from the 2nd
Amendment’s guaranty of the right to bear arms, a right which was guaranteed at English law as far back as Magna Carta, that open carry is not something the government may give or take away or limit. The
point was also made that the right to bear arms allowed the people to protect themselves from their
government and thereby required the government to respect the people rather than act tyrannically as a
result of knowing the people were in no position to resist the government.

A criminal defense lawyer expressed his neutrality on the issue of Open Carry, noting that a party
using a firearm still had to be able to demonstrate that its use was justifiable, primarily as in the case of
self-defense. Representatives of law enforcement and attorneys working with law enforcement also
expressed their appreciation of the right of citizens to own firearms and to be able to use them in self-
defense. However, they also expressed their deep concerns about the ability to carry those firearms
anywhere and everywhere under any circumstances. They expressed their concerns that government
could not limit or restrict the carrying of firearms (open or concealed) in places and circumstances, where
these public officials felt, were detrimental to public safety or good order. Sheriffs and Police Chiefs noted the inhibitions Open Carry creates in law enforcement officers, particularly at a crime scene. Officers are used to being able to be in control of a scene on which they arrive and are used to being the only ones there who are armed (or, at least, obviously so). Officers pointed out that Open Carry can be a real limitation upon the ability of police officers and sheriffs’ deputies to control tense scenes or those emotionally charged.

In discussing this point, law enforcement representatives universally noted their concerns as to the risk of guns, especially handguns, in the hands of those who are not trained in the proper use and utilization of firearms and those who are under a disability or limitation concerning the use of firearms, such as those with limiting or incapacitating mental illness. These participants felt that Open Carry places a heavy burden on law enforcement which it has not previously, generally had to bear.

A 2nd Amendment scholar opined that while the right to openly carry a firearm is a basic right, the right to carry a concealed weapon is not a right. He pointed out that allowing firearms to be carried only by those licensed by the government can produce adverse results and can prevent members of the public from not only exercising a fundamental right but at a time when they might most need it. The attorney noted that during the 1960's, when Dr. Martin Luther King, Jr. was constantly under threat as to his safety, the State of Alabama denied Dr. King a permit to carry a firearm to protect himself. He went on to commend 2014's HB 314, pending in the Mississippi Legislature, as a reasonable way to effectively prohibit local governments with interfering with the right of people to openly carry firearms and make legitimate use of them.

There were a variety of opinions as to Mississippi’s Castle Doctrine Law. A law professor opposed the Castle Doctrine because of her belief that the law governing self-defense and justifiable homicide were sufficient to protect the individual without creating a presumption that the use of deadly force was lawful so long as within a person’s home, business or vehicle. If force is to be used, it must be reasonable. This view, which was shared by members of law enforcement and the judiciary, expressed the concern that the Castle Doctrine’s presumption might protect one who took advantage of circumstances in his home, business or vehicle to use lethal force against an enemy or opponent or someone he wanted punished, i.e., someone who’s death or serious injuring would not have been defensible under typical considerations of self-defense or justifiable homicide. It was noted that, “A fleeing felon doesn’t necessarily pose a threat.”

Some went further to point out that it seemed particularly repugnant to allow someone to use deadly force where his or her life was not in danger or when he or she could have safely retreated or when he or she was only protecting property. In counterpoint, an attorney stated that in invoking self-defense or justifiable homicide that no state in the union requires a person to retreat unless it can be done in absolute safety; the risk of personal harm is presumed in such cases. For the attorney, Mississippi’s Castle Doctrine Law is a well-written, robust law which is workable and which does not protect those who have malicious intent rather than who are simply protecting their person or property.

A member of the judiciary expressed his concern, not so much about the Doctrine itself, but that the Castle Doctrine Law was not being consistently applied throughout the state. In addition, he called for judgments on the applicability of the Castle Doctrine Law to be made by district attorneys and not by law enforcement departments.

Many questions were asked of participants by members of the public who attended on a variety of issues. The Forum was concluded after more than two (2) hours, and despite that amount of time, many of
the public attendees remained for a considerable time afterward to continue to ask questions and discuss issues with the Forum participants. Public positions were quite diverse.

All participants generally agreed that there was a need for a continuing discussion of the open carry of firearms and the risks and issues raised by Open Carry and the Castle Law Doctrine.

What Can We Conclude / What Questions Remain?

Conclusions

- Any person who carries any bowie knife, dirk knife, butcher knife, switchblade knife, metallic knuckles, blackjack, slingshot, pistol, revolver, or any rifle with a barrel of less than sixteen (16) inches in length, or any shotgun with a barrel of less than eighteen (18) inches in length, machine gun or any fully automatic firearm or deadly weapon, or any muffler or silencer for any firearm, whether or not it is accompanied by a firearm, and carries it concealed (under the new definition) is committing a crime, specifically a misdemeanor for a first or second offense, and a felony for third and subsequent defenses.

- A person can carry these weapons concealed without being charged with a crime if he obtains a license, most often referred to as a "carry permit". The Mississippi Department of Public Safety is responsible for issuing the license, assuming statutory requirements are met by the applicant.

- Local legislation cannot "preempt" these laws by restricting the possession, transportation, sale, transfer or ownership of firearms or ammunition or their components in its jurisdiction, except by statutory exception.

- Statutory exceptions allow limited local legislation, chiefly: a) to require citizens or public employees to be armed for personal or national defense, law enforcement, or another lawful purpose; b) to regulate the discharge of firearms within the limits of the county or municipality; c) to regulate the use of firearms in cases of insurrection, riots and natural disasters when necessary to protect the health and safety of the public; or d) to regulate the carrying of firearms at a public park, a public meeting of a county, municipal or other government body, at a political rally, parade or official political meeting, and at a non-firearm-related school, college or professional athletic event. [Questioned by some and by HB314-2014]

Some of the Questions Remaining

- If an instrument is not defined by or listed in Miss. Code Ann. §97-37-1, but it is carried by someone who has a license to carry, duly issued by the Mississippi Department of Public Safety, is that individual guilty of violating §97-37-1?

- What affect does the language of §45-9-101(18) have, which states: "...nothing in this section shall be construed to allow the open and unconcealed carrying of any deadly weapon as described in §97-37-1"?

- Assuming that Mississippi is an "open carry" state, meaning that Mississippi citizens can carry unconcealed weapons of any sort without violating any law, does this right apply to all Mississippi citizens, or only those who might qualify to obtain a carry permit? In other words, can Mississippi citizens who suffer from a physical infirmity which prevents the safe handling of these designated weapons still carry them unconcealed upon their person? What about those who chronically or habitually abuse controlled substances to the extent that they are impaired, or our citizens who chronically and habitually use alcoholic beverages to the extent that they are impaired? And what of our mentally impaired or incompetent citizens?
• Can Mississippi citizens carry unconcealed weapons of any sort into those places that, even with a carry permit, an individual cannot carry a concealed weapon (places like police stations, sheriff's departments, highway patrol stations, courthouses, places that governmental bodies meet, schools, bars, places of worship and all those other regulated areas)?

• Under the open carry concept, can citizens carry unconcealed weapons anywhere, at any time?

• Does restricting where you can carry a gun and restricting those who are dangerous from carrying deprive people of their right to own and properly use firearms?

• Are the same kinds of limitations on such rights as free speech applicable, constitutionally to the right to bear arms, and, if so, how does that affect the open carry/castle doctrine discussion?