

Constitution, Law, and the Auxiliary Coursebook

Eric Vought*

17 September 2019 (Constitution Day)

Contents

1	Introduction	2
1.1	Legal	2
1.2	Overview	3
I	CLA-I: Introducing the Law and the Auxiliary	4
2	CLA-I Introduction	4
3	History of the Sheriff’s Office	6
4	The Development of the Constitution	8
4.1	The Right of the Polity to Bear Arms	9
4.2	Common Law and BBOR	10
4.3	Declaration of Independence and Revolution	12
4.3.1	Failure of the Articles of Confederation	14
4.4	Constitution – A Republic, If You Can Keep It	15
5	The Sheriff Under the Law	16
5.1	Independence	16
5.2	Election	17
5.3	Deputies	18
5.4	Duties	19
6	Models For the Auxiliary	21

*Commander, LCSA; Thanks as well to LT Mary Clapp (LCSA ret.), Inside Counsel, who gave input on early versions of this course.

7	Crisis Intervention	22
7.1	First Aid, Consent to Treatment, and Standard of Care	22
7.1.1	Good Samaritan Law	23
7.2	Non-violent Crisis Intervention	24
7.3	Missouri law, self-defense, and prevention of a felony	24
7.4	Radios In an Emergency	29
7.5	Balancing respect for property and emergency response	29
8	Different Roles As Volunteers	29
9	Brief Overview of the Right To Bear Arms In MO	31
 II CLA-II: Civilians in Civil Defense: Authority, Delegation, and Discipline		32
10	Introducing Civilians in Civil Defense	32
11	Officers, Authority, and Chain-Of-Command	33
11.1	Source	35
11.2	Responsibilities	35
11.3	Limits	36
11.4	Chain-Of-Command	38
11.5	Accountability	42
12	Discipline and Offenses	42
13	Changing Roles	42
	References	42

1 Introduction

This is the coursebook for the Lawrence County Sheriff’s Auxiliary’s Constitution, Law, and the Auxiliary classes, one Part per level of the class. The coursebook is meant to accompany the lecture and the slides for review and further exploration.

1.1 Legal

Copyright

The CLA course materials are distributed under under the Creative Commons Attribution 4.0 (CC-BY-4.0) license. Under the terms of this license, the materials may be freely copied and used to create derivative works, for instance, to create course materials for other organizations, as long as proper attribution is given.

Availability

The course materials as a whole shall be available on the Auxiliary's public-facing website http://lcmoauxiliary.org/CMS/CLA_Constitution_Law_Auxiliary_Course and will periodically be put on CD-ROM for distribution at classes. For non-volunteers, a CD-ROM may be obtained by written request to the Auxiliary's official address in this boolet with a minimum \$5 donation to cover effort and costs. Make a check out to the the Lawrence County Sheriff's Office with "LCSA donation" in the memo (not tax deductible as of the time of this writing). We will also often have such disks at Auxiliary events and meetings.

Disclaimer

Information about laws and legality in this class are offered in the hopes that they might be useful. They represent the understanding and policy of the Sheriff's Auxiliary for its own use, *but are given with no guarantee and are not legal advice*. Particularly when reusing these materials for other organizations, the reader is warned to research these issues for themselves and consult a qualified attorney. Citations are provided to facilitate that research.

1.2 Overview

Requirements

- CLA-I Required for all volunteers;
- CLA-II Recommended, Required for NCOs and Officers;
- Additional levels elective material;

The first level of this class is required for all Sheriff's Auxiliary volunteers. The second level is required for all officers/officer candidates and recommended for all volunteers. Additional levels of the course will cover elective material.

The series of courses was required from the inception of the Auxiliary as critical for volunteers to understand their role within the Sheriff's Office, under the law, and within the community they serve. They cover the history/purpose of the Sheriff's office, property rights under the Constitution, our role as an 'auxiliary' and the legal issues surrounding intervention in situations we may face, the nature of officers, enlisted, and delegated authority, the nature of the oath of service, leadership, discipline, principles of use of force, and related concepts.

The second level of the class concentrates on what officers need to know to understand their leadership role. Because it puts the hierarchical structure of enlisted and commissioned volunteers in context, it will be useful for enlisted as well, particularly for non-commissioned officers or volunteers hoping to be non-commissioned officers.

Part 1 Topics

- Introducing the Law and the Auxiliary
 - History/Purpose of Sheriff’s Office
 - Property Rights Under the Constitution
 - Our Role as Auxiliary
 - Legal Issues of Intervention

Part 2 Topics

- Nature of officers, enlisted, delegated authority, oath
- Leadership
- Discipline
- Use of Force

Emergency response volunteers serve when the normal response structures are overwhelmed and the situation may not fit within the bounds of set policy. Although the SOPs/SOGs included in the Volunteer Handbook will expand to cover as many situations as we can conceive of, volunteers must be trained in the *principles* to make the best possible decisions *consistent with their training* when those documents are not adequate. We may also be called upon to be leaders within the community and supervise other, non-Auxiliary, volunteers from time-to-time, as specialists or team-leaders in a mixed-discipline team or to organize Spontaneous Unsolicited Volunteers. Therefore all volunteers must understand these concepts not just for their own effective performance, but to be able to convey them to others when needed and provide a model to follow.

Courses will start out in lecture style in order to cover material quickly and provide a foundation. As they progress, they will become more seminar-oriented and interactive to discuss difficult material, concepts, and ethical challenges.

Part I

CLA-I: Introducing the Law and the Auxiliary

2 CLA-I Introduction

The first level of this course is intended to be taught lecture-style to give a broad background in the issues we face. Because a great deal of information is covered in the lecture, it is recommended that volunteers come back to this

course booklet to review and understand in greater depth. Citations are given for more background in topics which might interest the reader.

The intent of this course is to cover the basics of the history and purpose of the Sheriff's office, property rights under the Constitution, our role as an auxiliary, and the legal issues surrounding intervention in situations we may face (i.e.: consent to treatment for first aid situations, MO law on intervention to prevent a violent felony, fcc regulations governing radio use in an emergency). It shall also cover the differences inherent in the roles we may play (deputized, acting as a volunteer, acting in personal capacity). Detailed examination of the roles of *deputy*, *officer*, and *enlisted* shall be given in Part II. We will look at some historical cases where things may have been done right and some where they were done wrong and discuss them.

What Is the Sheriff's Auxiliary?

- Non-Peace Officer Volunteers serving county sheriff
- Supplement Sheriff's Office during routine operations
- Coordinated teams during disasters
- Not replacing deputies or reserve deputies
- Does not provide primary law enforcement or investigate

The Sheriff's Auxiliary Organization Document and Volunteer Handbook are online, in the public-facing website. The Mission Statement is part of that:

Mission Statement: To supplement the Sheriff's capabilities in routine operations (e.g. neighborhood patrols) and provide a pool of trained, pre-qualified, well-coordinated teams during non-routine operations (e.g. a disaster). The Auxiliary is not intended to replace deputies or the Reserve Deputy Program, in or out of an emergency, but to provide complementary skills and provide opportunities for community members to participate who do not desire a career in law enforcement. The Auxiliary is intended neither to provide primary law enforcement nor criminal investigative skills. The Auxiliary answers to the Office of the Sheriff when properly called up and directed in an emergency; Auxiliary members have no authority when not empowered and directed by the Sheriff. At the same time, the Auxiliary shall not be the personal gang of the Sheriff and is to be used only in the furtherance of public order and in defense of the community at large.

Volunteers are expected to read both documents. Parts of the Organization Document will be picked apart in Part II

Motto

Per ardua liberis

meaning: "Freedom through adversity."

- It is only through duty and service that we have rights, only through sacrifice and hardship that we are or will remain free.

Purpose of the Class

- To serve Sheriff's Office, we must understand it;
- To take oath of service, we must understand the Constitution;
- The Sheriff serves the people;
- In the end, so do we.

3 History of the Sheriff's Office

Where is "Constitutional Sheriff"?

Fact 1. *Sheriff not in the Constitution*

- Common Law
 - Edwin the Elder, 902 AD
 - Magna Carta (1215 AD)
 - "British Constitution"

- County Charters
- State Constitutions

"We will appoint as justices, constables, sheriffs, or bailiffs only such as know the law of the realm and mean to observe it well." — Constitution Society [2003]

King John was compelled to sign Magna Carta ("Great Charter") by a group of noblemen, including some fourteen sheriffs to recognize the rights of nobles and Englishmen. It established that no one is above the law. The document both established powers of and limits to the office of the sheriff.

Magna Carta is one of the primary documents, including the British Bill of Rights, comprising the "British constitution". When the American Colonists or citizens of the early US petitioned for their "constitutional rights", this is what they were referring to. This can be confusing when reading early American documents before the ratification of "the" Constitution.

In some states, the power of the local sheriff is being eroded. Delaware has curtailed the power of county sheriffs by declaring that they are not conservators of the Peace and have no authority independent of the state[Counts, 2013].

“Shire Reeve”

- Official responsible for keeping the peace on behalf of the King
- Conservator of the Peace -; Peace Officer
- In US, directly elected
- Usually highest elected law enforcement officer (“CLEO”)
- Deputies are commissioned, act for Sheriff

The Reeves were either appointed by the local manor or indirectly-elected by the local councils of the hundreds. Groups of ten-households were organized into “tithings” and ten tithings into the hundreds. Hundreds, each with a constable and various reeves, were then organized into Shires (variously “Scirs” or “Scyrs”). The Reeve of the Shire, responsible for implementing decisions of the court, reported to an Earl or Count, a “Count-y Shire-reeve”.

Various changes occurred during the Norman conquest, including the creation of the Baliff and Sheriff becoming an officer serving at the pleasure of the king. Over time, the tendency has been for the Sheriff to keep returning to its roots as an elected office serving the common people. (see, e.g. Bennett [1938]).

Although the sheriffs under Alfred the Great and onward were required to keep the peace, they did so relying on the people. If a criminal or suspect was at large, the Sheriff gave the “hue and cry” (Note this language in the statute of Northampton) and the citizens were obligated to answer the call. The “tithingmen” who responded were in some sense the first sheriff’s auxiliaries.

What Did Sheriff Do?

- Originally kept peace, enforced edict, served process, held local court
- Medieval Circuit Courts split function
 - Sheriff, Magistrate, first jury trials

“Sheriff’s Office”

“Office” not department!

Sheriff answers *directly* to the people.

Fact 2. *The Sheriff is not the Chief LEO in St. Louis County.*

4 The Development of the Constitution

Approach

- Frame history of debate over personal and civil defense;
- British Common Law and Bill of Rights
- Declaration of Independence
- Revolutions
- Constitution

Further Reading List:

- Declaration of Independence
- US Constitution
- Missouri Constitution
- "That Every Man Be Armed" Halbrook [2013]
- "The Law" Frederik Bastiat circa 1850
- The Federalist Papers (and Anti-Federalist papers)
- "Ratification: The People Debate the Constitution, 1787-1788" Maier [2010]
- "Foundations of American Constitutionalism" Richards [1989]
- Commentaries on the Laws of England Blackstone [1753]

Approach To Reading

- Don't accept any author as authoritative!
- Frame in context of debate over Rights, Duties, and Authority.
- When someone claims authority, where does it come from?
- When someone has a Right, what does it mean?
- Who do you owe Duties to?
- How do we balance liberty and civility? Is it really a "balance"?
- What is nature of crime and punishment?

4.1 The Right of the Polity to Bear Arms

Polity

Definition 3 (Polity). “The whole constitutional set-up is intended to be neither democracy nor oligarchy but midway between the two— what is sometimes called ‘polity’, *the members of which are those who bear arms.*” [emphasis in original] —Aristotle, "Politics" as quoted in Halbrook [2013, pp 52]

- Aristotle refutes Plato’s contention that the State ought control all use of arms in order to control the populace;
- Not new: debate spans thousands of years;

Common Law

- We take from English tradition;
- Roman law, 12-tables
- Dane-Law est. militia, traditional rights, and representative gov’t
 - (Fyrd-ȝWycan-ȝMoots: we’ll get to it);
- Norman invasion created absolute authority of monarch; took time to recover;
- Magna Carta (1215)

Right To Personal/Civil Defense

And yet in some cases a man may not only use force and arms, but assemble company also. As may assemble his friends and neighbors, to keep his house against those that come to rob, or kill him, or to offer him violence in it, and is by construction excepted out of this Act; and the Sheriff, etc. ought not to deal with him upon this Act; for a man’s house is his Castle, and *domus sua cuique est tutissimum refugium* (a person’s own house is his ultimate refuge). And in this sense it is truly said, *Armaque in Amatos sumere jura sinunt* (and the laws permit the taking up of arms against armed persons). —Sir Edward Coke’s "Institute of the Laws of England" (1628)

Note the mention of “Castle Doctrine” here. The idea goes back much further, at least to the 12 Tables of Roman Law (Roman Republic).

The statute being referred to is the Statute of Northampton (1328) and the GATTOP or Going Armed To the Terror of the People offense. This author has an online article on GATTOP and the Statute of Northampton [Vought, 2015]. Note that the linked article is **not** an official publication of the Sheriff’s Auxiliary or the Sheriff’s Office.

The phrase "In terrorem populi", "armed to the fear of the people" is often quoted in US statute and case law.

Common Arms of the Day

No wearing of arms is within the meaning of the statute unless it be accompanied with such circumstances as are apt to terrify the people; from when it seems clearly to follow, that persons of quality are in no danger of offending against this statute by wearing common weapons... — "Treatise of the Pleas of the Crown", William Hawkins;

- 1686 court case affirmed defendant's right to go armed with a pistol despite the Statute of Northampton when not armed "in affray of peace".

After passage of English game laws in 1706, *Rex v. Gardner* held law did "not extend to prohibit a man from keeping a gun for necessary defense, but only for *making forbidden use of it*" [emphasis mine]

4.2 British Common Law and English Bill of Rights (1689)

British Bill of Rights (1689)

- Attempt to disarm protestants;
- presented to William and Mary;
- to 'restore' ancient rights— did not create anything;
- Inspired US Bill of Rights; included:
 - No royal interference with the rule of law;
 - "grants and promises of fines or forfeitures" before conviction are void;
 - prohibits "cruel and unusual" punishments;
 - Citizens have a right to bear arms because citizens have a **duty** to bear arms and **serve the common defense** (Locke)

After the English Reformation begun under Henry VIII, (1530s), England had several bloody periods of strife between Protestants and Catholics. Mary I ("Bloody Mary") reunified England and the Roman Catholic Church and purged protestants from power.

"It is now estimated that the 274 religious executions carried out during the last three years of Mary's reign exceeded the number recorded in any Catholic country on the continent in the same period." —[Nigel Heard (2000). *Edward VI and Mary: A Mid-Tudor Crisis?* . Hodder & Stoughton. ISBN 978-0-340-74317-1.]

There is a complex period of history here. Elizabeth I reformed the Church of England. The King James Bible (James I of England and James IV Scotland) was complete in 1611. Religious unrest culminated in English Civil War. Calvinism and Puritanism also formed here. James II was Catholic, deposed by William of Orange who then ruled jointly with Mary II.

The British Bill of Rights was written to address abuses under James II where Catholics were removed from power and forbidden from militia service while their Catholic neighbors were armed. The BBOR therefore establishes the right *to not be excluded from civil defense* as the basis for the Right To Keep and Bear Arms following the philosophy of John Locke. The keeping of a standing army during peacetime was forbidden.

To Protect and Maintain Inviolable

But in vain would these rights [e.g. free speech] be declared, ascertained, and protected by the dead letter of the law, if the constitution had provided no other method to secure their actual enjoyment. It has, therefore, established other auxiliary subordinate rights of the subject, which serve principally as outworks or barriers, to protect and maintain inviolable the three great and primary rights, of personal security, personal liberty, and private property. —Blackstone [1753, pp 104]

These three primary rights, personal security (life), liberty, and property should sound familiar. The right of property was expanded to “pursuit of happiness” in a draft of the Declaration of Independence.

Checklist For Revolution (Blackstone)

“And lastly, to vindicate these rights, when actually violated or attacked, the subjects of England are entitled, in the first place, to the regular administration and free course of justice in the courts of law; next, to the right of petitioning the king and parliament for redress of grievances, and, lastly, to the right of having and using arms for self-preservation and defense.” — Blackstone [1753, pp 106]

Checklist For Revolution (II)

- Practically a blueprint for Declaration of Independence;
- Checks off Colonists attempts to address their grievances;
- Turns to raising arms against the king as the final resort;
- Exhausted all peaceful mechanisms;
- Our system built to same plan;

Instinctive Reverence For Law and Tradition

"Here is the salient fact which distinguishes the English Revolution from all others: that those who wielded irresistible physical force were throughout convinced that it could give them no security. Nothing is more characteristic of the English people than their **instinctive reverence even in rebellion for law and tradition.**"
— [Winston Churchill, A History of English Speaking Peoples. Volume II. pp 265]

The Utter End of Means

- Armed resistance against tyranny is directly a purpose of RTKBA;
- **If-and-only-if** pursued at absolute and utter end of means;
- Neither free license to insurrection nor paranoia;
- Built directly on experiences of Colonists under England;
- Enjoyed extensive legal protection of 'Constitutional rights' as British subjects;
- "...repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny."

Blackstone was a royalist: he believed strongly in the right of kings to rule and in the English monarchy particularly. Locke, Payne, and others rejected hereditary power. It took others to restore the debate to a little-r republican context, including Madison, et al. (Federalist Papers), and Bastiat (The Law, circa 1850). Bastiat, in particular spoke to what went wrong with the French Revolution and the limits of "mob rule", distinguishing what was attempted in the US and England from France.

4.3 Declaration of Independence and Revolution

"Intolerable Acts"

- Also problems with paper money and lack of specie ("hard money") in Colonies;
- Colonial taxes were higher, but could often be paid in service, goods (also bribes);
- British taxes paid in silver, and Americans had very little;

Rights Not From the Government

...We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness... — Declaration of Independence

- "unalienable": Can't be taken away; can't be given away
- "Natural Rights" but also Natural Duties:

...it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security...

Civil conflicts and the common citizen

- Many citizens lost their homes, their farms, or their lives regardless of which side they declared to;
- Challenge is to survive and maintain local order in the face of upheaval;

RTKBA ensures that revolution possible, but it is **always** *extremely* costly;

Why Did Our Revolution Succeed?

- Britain was a 'foreign power' which could be sent home;
- Colonial government transferred intact;
- Many people patriated and forgiven (not all);
- Revolutions where it is people vs. government seldom yield a stable system;

Founders Were Revolutionaries

- Balance of powers and multi-level sovereignty;

If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions. — Federalist #51 (Madison)

We Are Literally, an “Auxiliary Precaution”

- Office of Sheriff directly serves the citizen;
- Operates as speedbump: ensure process is followed;
- Sheriff/Auxiliary == Locals-In-the-Loop Law Enforcement;

Romans 13

Christians required to be law-abiding, but here, the final (civil) authority is the *polity itself*.

4.3.1 Failure of the Articles of Confederation

Weak Fraternity of States

- Little central power; direct war effort;
- AoC failed to provide for common defense;
- Government had no money (what it was empowered to collect was seldom remitted);
- Insurrection in several states, inc. Mass.

Fact 4. *John Hanson was the first US President.*

The Solution

- Letters between Wash and Jefferson discussing its replacement;
- Convention to amend AoC became Const Convention 1787;
- Delegates (“Commissioners”) broadly empowered by sending states;
- "Ratification— the People Debate the Constitution, 1787-1788" Maier [2010];

Definition 5. Federal = “of equals”; “Federalists” wanted multi-level sovereignty, *balance* of power; Anti-federalists wanted states to be (remain) supreme.

People have described the Constitutional Convention as a “runaway convention”, that the commissioners were sent to revise the Articles of Confederation but exceeded their authority by throwing it out and replacing it instead. In reality, the Constitutional Convention was not under the Articles. Virginia and New Jersey called the Philadelphia convention after the recommendation of the Anapolis convention of states. The states wrote very broad commissions to amend the “federal constitution”, in the British sense of the word: to modify the core documents of the national government. The congress under the Articles recommended by resolution that the convention be limited to amendments to

the Articles, but as *they did not call the convention*, they had no authority over it. Constitutional historian Robert G. Natelson lays these facts out in detail in an essay “A Response to the ‘Runaway Scenario’” [2013, pp 7] in his defense of calling a modern Article V Convention. For purposes of this course, we are not endorsing his arguments on Article V Conventions, but Natelson is one of the preeminent experts on the original Constitutional Convention.

The arguments for a strong union were laid out by Hamilton in Federalist #9 and #10 (Hamilton and Madison). The Federalist papers were written as a series of letters to the editor supporting the new Constitution during the ratification debates in New York, authored by *Publius*. John Jay, Alexander Hamilton, and James Madison each wrote some of the essays. Federalist #10 is one of the most famous political commentaries in our history.

At the time, there were also ‘anti-federalist papers’ opposing the Constitution authored by various people (some of them we still have not identified) over the course of the debates. The utility of the Federalist Papers is they were written as a unit and *summarized the anti-federalist debate as they went*. It is therefore much easier to start by reading the Federalist Papers and read the anti-federalist papers in context. Hillsdale College offers a free online course in the Federalist Papers (10 weeks, video lectures and selected readings). Their Constitutional Reader includes copies of the essays on both sides of the debate.

4.4 Constitution – A Republic, If You Can Keep It

The Origin of the Bill of Rights

- Delegate powers to a limited government;
- States still did not trust central government;
- Required Bill of Rights like British of 1689;
- Rights not enumerated; Powers are enumerated (9th and 10th)
- 2nd Amendment echoed right and duty of British Bill of Rights;
- RTKBA individual right, serves civic duty;
- Strong property rights reinforced, including Takings Clause;

The Missouri Constitution and its protections

- US Constitution guaranteed a "republican form of government";
- Article II, Section 23 echoes RTKBA but without civic focus;
- Many other property rights issues follow US Const. BoR;
- Very different from US Constitution, much more complex;

The Missouri Constitution is available printed/bound from Missouri Secretary of State or can be read on the website.

5 The Sheriff Under the Law

Only mention in US/State Constitutions

b. Upon the effective date of this article, the office of constable serving magistrate courts is abolished. The functions, powers and duties of such constables shall be transferred to and be performed by the sheriff of the county or the sheriff of the city of St. Louis.

5.1 Independence

Mo Constitution Article III, Sec. 40

The general assembly shall not pass any local or special law: ... (21) creating offices, prescribing the powers and duties of officers in, or regulating the affairs of counties, cities, townships, election or school districts;

- Also applies to municipalities
 - So state and cities may not interfere with the office of Sheriff (within his county and with reference to his county duties)

The sheriff is a county officer within the meaning of the constitutional provisions for county charters, and particularly §§ 18(b) and 18(e), Art VI, which means that in Chartered counties, the county charter may allocate the duties of the sheriff differently than the legislative statutes. *State ex rel. Shamble v. Gamble*, 365 Mo. 215, 225, 280 S.W.2d 656, 1955 Mo. LEXIS 574 (Mo. 1955). Charter County may also eliminate the office of Sheriff (as with St. Louis County) in its charter Mo Constitution Art VI Sec 18(b).

Independence From Federal Government

Residual state sovereignty was also implicit, of course, in the Constitution's conferral upon Congress of not all governmental powers, but only discrete, enumerated ones, Art. I, § 8, which implication was rendered express by the Tenth Amendment's assertion that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people. — [*Printz v. United States*, 521 U.S. 898, 919 (U.S. 1997)]

The Federal Government may not compel the States to enact or administer a federal regulatory program. The mandatory obligation imposed on CLEOs to perform background checks on prospective handgun purchasers plainly runs afoul of that rule. — [*Printz v. United States*, 521 U.S. 898, 933 (U.S. 1997)]

This was Sheriff Mack's case over the Brady Bill Assault Weapons Ban.

Anti-Commandeering Doctrine

Definition 6. Forbids the federal government from ordering the states or their subdivisions from governing or regulating in a particular way or from ordering (“commandeering”) state/local officers as subordinates of the federal government.

5.2 Election

MO Election of Sheriff

- MO RS section 57.010
 - Every county elect a sheriff every four years at each general election;
 - Takes office on the first day of January following the general election;
- Qualifications, duties and restrictions on the office of sheriff in the MO Statutes (part. chapter 57) and the Missouri Constitution;
- Rules may vary depending on the county classification;
 - Lawrence is class 3, non-chartered;

Qualifications

- Not a felon;
- Resident taxpayer and voter;
- Resident more than 1 year;
- “...shall be a person capable of efficient law enforcement.”

No person shall be eligible for the office of sheriff who has been convicted of a felony. Such person shall be a resident taxpayer and elector of said county, shall have resided in said county for more than one whole year next before filing for said office and shall be a person capable of efficient law enforcement. — RSMO 57.010

Needs To Be Peace Officer

- Must have a valid license at time of filing;
- Is not eligible for office without license;
- RsMO 57.010 (2) changed in 2013;
- Controversy in 2016 Greene County Election;

Prior to 2013, Missouri law only required an elected Sheriff to obtain a Peace Officer's license after winning election. The Sheriff had no authority outside the county and could not exercise powers of an LPO until licensed. They could, however, act through licensed deputies.

After 2013, a candidate was required to have a license prior to filing and maintain the license throughout their term. Candidate Doug Burlison attempted to file in 2016 in nearby Greene County but his application fee was denied. The matter was never litigated due to lack of funds so this provision has not been tested in court.

Peace Officer Licensing: Licensing as a Peace Officer is regulated by the Missouri Post Commission. The Commission is an eleven-member board representing the congressional districts of the state of Missouri. The Commission consists of three chiefs of police, three sheriffs, two peace officers at or below the rank of sergeant employed by a political subdivision, one licensed training center director, one representative of a state law enforcement agency and one public member. Each are appointed by the Governor for a three-year term. Each commissioner, at the time of appointment, shall be a citizen of the United States and a resident of Missouri for at least one year and no more than two members may reside in the same congressional district as any other at the time of their appointments.

General Requirements to be a Peace Officer

- Twenty one (21) years of age
- United States citizen
- High school diploma or its equivalent;
- Graduate of a Basic Law Enforcement Training Center;
- Passed the Missouri Peace Officer License Exam;
- No criminal history as outlined in Section 590.080.1 and Section 590.100.1, RSMo.

Bond

Within 15 days of being sworn in, every sheriff must post a bond between \$15,000 and \$50,000 conditioned for the faithful discharge of his duties; which bond shall be filed in the office of the clerk of the circuit court of the county. § 57.020 R.S.Mo.

5.3 Deputies

The sheriff in counties of the third and fourth classifications (includes Lawrence) shall be entitled to such number of deputies and assistants, to be appointed by such official, with the approval of a

majority of the circuit judges of the circuit court, as such judges shall deem necessary for the prompt and proper discharge of such sheriff's duties relative to the enforcement of the criminal law of this state. Such judges of the circuit court, in their order permitting the sheriff to appoint deputies or assistants, shall fix the compensation of such deputies or assistants. The circuit judges shall annually review their order fixing the number and compensation of the deputies and assistants and in setting such number and compensation shall have due regard for the financial condition of the county. — § 57.250 RsMO

Deputies

- Must be resident of the county. § 57.117 R.S.Mo.
- Every deputy sheriff shall possess all the powers and may perform any of the duties prescribed by law to be performed by the sheriff. § 57.270 R.S.Mo.

Nepotism Restriction

Any public officer or employee in this state who by virtue of his office or employment names or appoints to public office or employment any relative within the fourth degree, by consanguinity or affinity, shall thereby forfeit his office or employment. — Mo. Const. Art. VII, § 6.

Sheriff who appointed his wife's uncle to the position of deputy sheriff with the approval of the circuit court was removed from office by the appellate court in a quo warranto proceeding for appointing a relative within the fourth degree of affinity. [State ex rel. Roberts v. Buckley, 533 S.W.2d 551, 1976 Mo. LEXIS 316 (Mo. 1976).]

Emergency Appointments

In any emergency the sheriff shall appoint sworn deputies, who are residents of the county, possessing all the qualifications of sheriff. The deputies shall serve not exceeding thirty days, and shall possess all the powers and perform all the duties of deputy sheriffs, with like responsibilities, and for their services shall receive two dollars per day, to be paid out of the county treasury. — § 57.119 R.S.Mo.

5.4 Duties

General Duties

Every sheriff shall quell and suppress assaults and batteries, riots, routs, affrays and insurrections; shall apprehend and commit to jail all felons and traitors, and execute all process directed to him by legal authority, including writs of replevin, attachments and final process issued by circuit and associate circuit judges. — § 57.100 R.S.Mo.

Definition 7. replevin: an action for the recovery of property taken. Gifis [2010, Replevin]

Sheriff In 3rd and 4th Class Counties May

1. Regularly patrol and police all public roads and highways within the county;
2. Enforce all laws designed to safeguard and protect these roads and highways;
3. Report all dangerous conditions on these roads and highways to the county commission or other road or highway supervising body.

Additional Duties

- Service of process in civil cases and collecting executions of judgments [§ 57.280 RsMO];
- Aid and assist the jury commissioners in the county by conducting investigations into the identity of prospective jurors [§ 57.395 RsMO];
- Every 3 months, file with the circuit court of the county a report on the conditions of county jail [§ 57.102 RsMO];

Investigations into jurors: When this course was written, Sheriff Brad Delay noted that he has never been asked to do this and that it is today seldom done.

Mutual Aid

Whenever any sheriff or deputy sheriff of any county in this state is expressly requested, in each instance, by a sheriff of an adjoining county of this state to render assistance, such sheriff or deputy shall have the same powers of arrest in such county as he has in his own jurisdiction. — § 57.111 R.S.Mo.

- No Dukes of Hazard county line prohibitions if neighboring sheriff asks for assistance!

6 Models For the Auxiliary

Fyrd, Housecarls, Witan

- Anglo-Saxon England; 7th century or earlier;
- The best of each household serve in the Fyrd;
- Limited length of time for service each season;
- Housecarls or "House Earls" served the Jarl or Earl (deputies);
- Local people met in moots, elected representatives to annual Witans;
- Witans determine succession;

England under the Danelaw was a recognizably republican system with a structure similar to the county Sheriff and a citizen militia. An "earl" is basically a gentleman farmer.

Hospitalers

- Templars = $\dot{\iota}$ convert by the sword;
- Hospitalers = $\dot{\iota}$ convert through service and leadership;
- Defend the innocent and heal what may be healed (equal opportunity)
- "Maltese Cross"

Zouaves, Militia

- Colonial militia primarily civil defense w/ some emergency response duties;
- Zouaves were elite volunteer companies (Col Ephraim Ellesworth);
 - Special forces and SWAT teams of their day;
 - Many of them, N&S, became famous units in Civil War;
 - 44th NY, Louisiana Tigers;
 - Ellsworth wrote a handbook on how to operate a volunteer company;

Red Cross

- Henry Dunant, Crimean War (1859)
- Help all injured on battlefield;
- No sides taken;

Toward a modern Auxiliary

- Flip 'militia' on its head;
- Serve the community first;
- Service without prejudice;
- Survival Skills Triad: First Aid, Communications, Defense;
- Build leaders in the community

7 Crisis Intervention

7.1 First Aid, Consent to Treatment, and Standard of Care

Consent

- Obtaining consent;
- When consent is implied;
- Standard of Care and patient abandonment;

Definition 8. implied consent: Consent that is inferred from signs, actions, or facts, or by inaction or silence.

As is covered in many of the required or elective trainings under the Auxiliary (e.g. CERT DMO, First Aid), consent must be obtained before rendering medical treatment of any kind, including first aid. Obtain consent by identifying yourself and requesting permission to help, "I'm John Doe of the Sheriff's Auxiliary. I have First Aid training. Do you need help? Do I have your permission to treat you?"

The response to these questions also helps determine the mentation (mental state) of the victim during triage (CERT Disaster Medical Operations Part 1). A victim who is unconscious or appears unable to respond is assumed to consent to life-saving treatment (implied consent). If a victim refuses treatment, you may not render aid (unless they become unconscious, in which case...)

If the victim is a minor, attempt to obtain consent from a parent or guardian nearby. If there is no one nearby to grant consent and treatment is necessary for the health or safety of the child, consent is implied. For older children, ask *both the parent and the child* if possible.

Rules for consent differ by state, sometimes markedly, so there may be specific rules applicable for an emergency that occurs in out-of-state travel.

Good Samaritan Law

Definition 9. Protects a volunteer who has been trained in first aid from liability for providing emergency care without compensation *to the level for which he or she has been trained* at the scene of an emergency or accident. [§ 537.037 RsMO item 2]

Also protects a physician, surgeon, registered professional nurse, or licensed practical nurse who is providing emergency care in good faith without compensation at the scene of an accident or emergency. [§ 537.037 RsMO item 1]

7.1.1 Good Samaritan Law

§ 537.037 RsMO:

1. Any physician or surgeon, registered professional nurse or licensed practical nurse licensed to practice in this state under the provisions of chapter 334 or 335, or licensed to practice under the equivalent laws of any other state and any person licensed as a mobile emergency medical technician under the provisions of chapter 190, may:
 - (1) In good faith render emergency care or assistance, without compensation, at the scene of an emergency or accident, and shall not be liable for any civil damages for acts or omissions other than damages occasioned by gross negligence or by willful or wanton acts or omissions by such person in rendering such emergency care;
 - (2) In good faith render emergency care or assistance, without compensation, to any minor involved in an accident, or in competitive sports, or other emergency at the scene of an accident, without first obtaining the consent of the parent or guardian of the minor, and shall not be liable for any civil damages other than damages occasioned by gross negligence or by willful or wanton acts or omissions by such person in rendering the emergency care.
2. Any other person who has been trained to provide first aid in a standard recognized training program may, without compensation, render emergency care or assistance to the level for which he or she has been trained, at the scene of an emergency or accident, and shall not be liable for civil damages for acts or omissions other than damages occasioned by gross negligence or by willful or wanton acts or omissions by such person in rendering such emergency care.
3. Any mental health professional, as defined in section 632.005, or qualified counselor, as defined in section 631.005, or any

practicing medical, osteopathic, or chiropractic physician, or certified nurse practitioner, or physicians' assistant may in good faith render suicide prevention interventions at the scene of a threatened suicide and shall not be liable for any civil damages for acts or omissions other than damages occasioned by gross negligence or by willful or wanton acts or omissions by such person in rendering such suicide prevention interventions.

4. Any other person may, without compensation, render suicide prevention interventions at the scene of a threatened suicide and shall not be liable for civil damages for acts or omissions other than damages occasioned by gross negligence or by willful or wanton acts or omissions by such person in rendering such suicide prevention interventions.

7.2 Non-violent Crisis Intervention

Avoiding Conflict

- Situational awareness - head off trouble early; (see 63)
- What is the root of the problem?
- Prevent the crisis from escalating;
- Keep your head, *even when others do not*;
- Avoid injury to yourself and others;
- Defusing the situation and resolving a crisis

7.3 Missouri law, self-defense, and prevention of a felony

Recap of CCW Materials

- RsMO 571.030 Unlawful use of weapons—exceptions—penalties.
- RsMo 571.107 Permit does not authorize concealed firearms (when)...
- Note 571.030 2. (1) exemptions for "...any person summoned by such [peace] officers to assist in making arrests or preserving the peace while actually engaged in assisting such officer;"

As Auxiliary volunteers are required to have a CCW (or valid exemption) to provide the Sheriff's Office background check, recent changes to allow permit-less carry do not really affect us. When not operating under the orders of an LPO (as above, 570.030 2(1)), we are required to obey the normal restrictions on carry-under-permit, including around schools, churches, and posted private property. We are likewise required to obtain permission at police stations or facilities of partner agencies and understand their security policies.

Use of Force Guidelines

- As a matter of law and policy, Auxiliary volunteers are not licensed Peace Officers and :
 - Are not empowered to defend property, only life;
 - Do not possess powers of arrest;
 - **Do not pursue;**
- Auxiliary policy **strongly discourages** use of *Citizen's Arrest* [RsMO 563.051.2] "in all cases except where a continued threat to life exists if the suspect were not immediately and forcibly contained".

The Use of Force Guidelines are in the Volunteer Handbook. Every volunteer shall read and understand these guidelines. (If you do not understand, *ask*.)

A citizen's arrest is an arrest or detention made by an individual who is not a sworn law enforcement officer. United States common law and Missouri statute (RsMO 563.051.2) states that a "private person acting on their own account may..." use physical force to effect arrest or prevent an escape according to the limitations given in that section. This means, in theory, that an Auxiliary volunteer, acting on their own authority, without orders from a licensed peace officer, may arrest someone, for instance, who has committed or is attempting to commit "a class A felony or murder".

However, as stated in our guidelines, the use of Citizen's Arrest *is extremely problematic* and will likely result in a legal mess even if the volunteer's actions are eventually found justified. Therefore, do not do this unless circumstances are so dire that there is *simply no other alternative possible*.

Cooper Color Code For Situational Awareness

White Unaware and unprepared;

Yellow Relaxed alert;

Orange Specific alert;

Red Fight;

More complete description [Combat Mindset and the Cooper Color Code. Wikipedia]:

White Unaware and unprepared. If attacked in Condition White, the only thing that may save you is the inadequacy or ineptitude of your attacker. When confronted by something nasty, your reaction will probably be "Oh my God! This can't be happening to me."

Yellow Relaxed alert. No specific threat situation. Your mindset is that "today could be the day I may have to defend myself". You are simply aware that the world is a potentially unfriendly place and that you are prepared to defend yourself, if necessary. You use your eyes and ears, and realize that "I may have to shoot today". You don't have to be armed in this state, but if you are armed you should be in Condition Yellow. You should always be in Yellow whenever you are in unfamiliar surroundings or among people you don't know. You can remain in Yellow for long periods, as long as you are able to "Watch your six." (In aviation 12 o'clock refers to the direction in front of the aircraft's nose. Six o'clock is the blind spot behind the pilot.) In Yellow, you are "taking in" surrounding information in a relaxed but alert manner, like a continuous 360 degree radar sweep. As Cooper put it, "I might have to shoot."

Orange Specific alert. Something is not quite right and has your attention. Your radar has picked up a specific alert. You shift your primary focus to determine if there is a threat (but you do not drop your six). Your mindset shifts to "I may have to shoot that person today", focusing on the specific target which has caused the escalation in alert status. In Condition Orange, you set a mental trigger: "If that person does 'X', I will need to stop them". Your pistol usually remains holstered in this state. Staying in Orange can be a bit of a mental strain, but you can stay in it for as long as you need to. If the threat proves to be nothing, you shift back to Condition Yellow.

Red Condition Red is fight. Your mental trigger (established back in Condition Orange) has been tripped. "If 'X' happens I will shoot that person" — 'X' has happened, the fight is on.

Although this is described as a "combat mindset", maintaining Condition Yellow, especially when in the field, serves non-violent crisis intervention. By maintaining situational awareness, you can often head off trouble before it starts. Only by noticing indicators of danger or conflict *before* it happens can you do something to prevent it.

Castle Doctrine

Definition 10. Missouri's Stand Your Ground law or Castle Doctrine [RsMO 563.031] means that you have no duty to retreat from a deadly threat if the threat occurs in your home or dwelling (such as a hotel room), your vehicle [RsMo 563.031 2.(2)] , or, as of recent changes in the law, your owned or rented private property [2.(3)] .

In many states, a citizen facing a criminal threat is first required to explore every opportunity for retreat before resorting to deadly force. In those states, if you are faced with a home invader coming in the front door, you may be charged with murder for killing them if retreating out the back door was a "reasonable"

alternative. In Missouri, under this law, you are not legally required to retreat [RsMO 563.031 3.] when your dwelling or property is invaded and have significant legal protections against civil or criminal charges [RsMO 563.071]. It is presumed that you have a right to be in your home and that someone climbing in your window in the dead of night does not have lawful intentions.

As we will discuss below (on the following page), the protections are not unlimited. Castle Doctrine does not necessarily protect you when you go on the offensive against someone who has not presented a threat (or is clearly no longer a threat) and has not themselves had an opportunity to retreat.

Who Is the Aggressor?

- Travon Martin case (2012)
 - George Zimmerman acquitted July 2013;
 - Did not raise Florida’s Stand-Your-Ground defense;
 - Evidence showed he was on back, under Martin at time shot was fired, therefore no duty to retreat;
 - Stand-Your-Ground, however, affected Jury instructions
- Rowe vs United States 164 U.S. 546 (1896):
 - Part of David Koppel’s group of Self-Defense Cases under the Fuller Court;
 - After initial altercation, accused walked away, victim chased accused with a knife
 - When the accused retreated from an altercation in good faith, his right of self-defense can be reasserted;

Many self-defense cases hinge on the question of who was actually the aggressor. Generally speaking, one cannot invoke self-defense if one started the confrontation. Sometimes, however, who started the confrontation or even how to define the limits of “the confrontation” can be confusing, especially if there seems to be multiple related confrontations. Two examples explored here are the trial of George Zimmerman, who was a neighborhood watch volunteer, and of David Rowe, who may have started an altercation but turned and walked away before being pursued with a knife by the other party.

Although the Zimmerman trial was treated by the media as controversy over Florida’s Stand-Your-Ground (SYG) law providing that people do not have a duty to retreat when confronted with violence in public, Stand-Your-Ground was not invoked as a defence at the trial. The defense felt that SYG was not necessary because evidence showed that Zimmerman was on his back with Martin at the time Martin was killed and there was further evidence that Zimmerman’s head was being slammed against the pavement (“ground and pound”)[Donaghue, 2013, Alvarez, 2013]. The defense therefore claimed that

Zimmerman had no ability to retreat from that circumstance and therefore duty-to-retreat, as a matter of law, was not relevant. Zimmerman was ultimately acquitted of both murder and manslaughter charges Alcindor [2013]. Because of these circumstances, many of the issues in the Florida trial would apply the same in Missouri law.

Some commentators point out, however, that SYG *did* have a substantial effect on one aspect of the trial: the jury instructions in self-defense cases were also changed by the SYG law Getz [2013].

David Rowe, a Cherokee Indian had an altercation with white Frank Bozeman after Bozeman flung a racial epithet during a game of cards. David Rowe kicked Bozeman under the table, flung down his cards, and walked away from the table. Bozeman then pursued Rowe with a knife. Rowe pulled a pocket pistol and shot Bozeman, who later died. Rowe was tried for murder, convicted, and sentenced to death. The Supreme Court reversed the conviction on the basis that Rowe had a valid claim of self-defense given that he had ended and walked away from the confrontation “in good faith”. The opinion by Justice Harlan also rejected the trial judge’s instruction to the jury that the defendant had a duty to paralyze or disarm his attacker rather than shooting to kill Kopel [2000, pp 316-317 (17,18 PDF)].

When the Response Goes Too Far

- Two youths rob Oklahoma City pharmacy May 2009;
- One of them pistol whips customer;
- Pharmacist opens fire, hitting 1 robber in head, 2nd robber flees;
- Pharmacist returns, fetches 2nd gun, fires 5 shots killing 1st robber, unconscious on floor;
- Pharmacist convicted of 1st degree murder in 2011;

The Pharmacy shooting fell under Oklahoma’s Castle Doctrine, which covers one’s place of business. The initial shooting, a response to armed robbery and in defense of a customer who was assaulted, fell under Castle Doctrine. The pharmacist then fired more shots out the door at the fleeing robber, which was arguably excessive, but no charges were filed. For the ‘coup de grace’ of the unconscious robber, he was charged with first-degree murder. The prosecutor argued, and the jury agreed, that by walking past the incapacitated robber with an empty gun, retrieving a second gun, and then firing at point-blank range, Jerome Ersland demonstrated that he was no longer afraid of the robber and acted with premeditation by coldly executing the helpless youth Clay [2009], Campoy [2011].

Responsibility to Secure a Weapon

- We are responsible for securing the arms we carry;
- If we allow arms to fall into the wrong hands, they become a tool of crime;
- Volunteers required to take Handgun Retention practical
- SOGs for Securing Weapons in Volunteer Handbook

Reflections on the Auxiliary and the Sheriff's Office

- Anything we do as volunteers reflects on Sheriff's Office;
- Anything we do (even off duty) reflects on the Auxiliary;
- Because this program is unusual/ambitious, we cannot afford mistakes;

7.4 Radios In an Emergency

Any Means To Get Help

Mayday, Mayday

In a genuine emergency, any person may use a radio to get help by any means necessary, regardless of licensing considerations.

7.5 Balancing respect for property and emergency response

- Know your neighbor to avoid conflict;
- Don't get shot by a nervous farmer...;
- Respect the limits of your authority (you don't have any) but...
- When protecting life comes first... *ask forgiveness later*;

8 Different Roles As Volunteers

Different Hats

- Acting in personal capacity;
- As a volunteer, officially, under authority of Sheriff;
- As a volunteer under the Incident Command System;
- Deputized in an emergency;
- Other hats you may carry (e.g. ARES/RACES, EMS);

- When stuff just happens;

Because of the different roles Auxiliary Volunteers may end up in, we need to be aware of how we are acting at any given moment. We may be called on to later articulate how we ended up in a situation, what authority we were given, the source of that authority, and what the limits of that authority were.

When we start out acting in a personal capacity, such as when we happen to be at the scene of an accident or medical emergency, we have permission from the Sheriff to initiate response at, for instance, a traffic accident, until more experienced or more appropriate responders arrive to take over. We need to do so purposefully and make it clear to bystanders what is happening:

“I am Sergeant So-And-So of the Sheriff’s Auxiliary and I am taking charge of this incident until peace officers [or paramedics] arrive.”

When we do this, we gain no special powers and we must remain within the limits of our training and policy. If possible, you must identify yourself as Sheriff’s Auxiliary (put on a Sheriff’s Office jacket, safety vest, etc.) and contact Dispatch to inform them of your actions. When someone arrives to take over the scene, they must formally relieve you in order to make it clear that you no longer have legal responsibility (otherwise, in some cases, you may face issues such as patient abandonment). We cover rituals for this kind of authority transfer in other trainings (including CLA-II, Disaster Medical Operations, and Incident Command System), but if the arriving responder does not make things clear, *ask for clarification*, “Am I relieved, Sir? Do you wish to assign me to another task?”

When we are assigned to another command structure under the Incident Command System, such as when assigned to the Mount Vernon Police or to the Community Emergency Response Team, we are still limited by our own policies and procedures. For instance, we must always obey our requirement to use the buddy system no matter who we are working with (although we may pair up with other volunteers or professionals, not just Auxiliary volunteers).

If you have other affiliations, including other volunteer organizations and professional organizations, you must make it clear when changing hats to do something we normally would not be permitted to do as Auxiliary volunteers. For example, if you are a paramedic with another organization, you may take advantage of protocols for treatment which the Auxiliary policy does not permit, however, you must announce the fact that you are now acting in a different capacity: “As a licensed EMT with the Barry/Lawrence Ambulance District, I am taking over medical care for this victim” and document/log this fact in whatever manner the emergency allows.

If we are ever deputized in an emergency (which is not likely), the Sheriff’s Office will mark volunteers who have been given additional authority in some fashion, such as with a blue braid on the uniform. We must then make it clear in our interactions with others what authority we have been given and in what capacity we are acting, “As a Temporary Emergency Deputy under the Sheriff’s

Office, I am ordering you to leave these premises,” or, “As a Baliff appointed by Judge Smith...”

9 Brief Overview of the Right To Bear Arms In MO

Right to Keep and Bear Arms–Exception

That the right of every citizen to keep and bear arms, ammunition, and accessories typical to the normal function of such arms, in defense of his home, person, family and property, or when lawfully summoned in aid of the civil power, shall not be questioned. The rights guaranteed by this section shall be unalienable. Any restriction on these rights shall be subject to strict scrutiny and the state of Missouri shall be obligated to uphold these rights and shall under no circumstances decline to protect against their infringement. Nothing in this section shall be construed to prevent the general assembly from enacting general laws which limit the rights of convicted violent felons or those duly adjudged mentally infirm by a court of competent jurisdiction. — [Missouri Constitution, Article I, Section 23, as amended August 5, 2014]

Blackstone’s "Commentaries" on the right of defense

"...it is indeed, a public allowance under due restrictions, of the natural right of resistance and self-preservation, when the sanctions of society and laws are found insufficient to restrain the violence of oppression..." — [Blackstone, 1753, pp 106]

- Division between harm to property, which the law can 'make whole' and
- Threats to life and limb, which the law cannot repair;
- Ability, Opportunity, Jeopardy - 3 factors defining lawful defense;
- Vigilantism is extrajudicial violence: doesn't matter whether committed by State or individual;

The exact scope of the changes made by Amendment V (2104) to Article I, Section 23, are still being litigated in the Missouri Supreme Court.

Tension Between Right and Regulation

- State authority to regulate *time, place, and manner* (e.g. *Heidbrink v. Swope*)
- Regulation may not effectively prohibit RTKBA or self-defense (e.g. *Peruta vs. San Diego* [overturned en banc]);

- Broad Auxiliary policy on Right To Keep and Bear Arms;

The official policy of the LCS Auxiliary regarding armed citizenry is three-fold:

1. It is our goal to encourage and facilitate the lawful bearing of or ready access to arms by trained individuals who are well-dispersed in the population. This policy flows directly from our mission to improve citizen response to emergencies and from citizen ownership of both civil defense and law enforcement. The word trained must take into account not just the mechanical skills but also the legal and ethical knowledge to understand when the use of violence is lawful, justified, and effective but should not imply a specific required training curriculum, training source, or narrow religious doctrine.
2. We are required under our oaths of service to uphold the fundamental rights of citizens, including the Right To Keep and Bear Arms (RTKBA) as protected by the 2nd Amendment and Missouri Article I Section 23[2].
3. Enforcement of laws prohibiting possession of firearms through legitimate due process (e.g. violent felons and adjudicated insane) is a legitimate purview of government, a common law and statutory responsibility of our served agency, the Lawrence County Sheriff's Office.

None of these policies is negotiable under our defined structure and purpose. Any public policies we support must be consistent with all of them. Within the constraints of these basic principles, there is still wide room for debate on the precise civil policies for supporting lawful bearing of arms.

Part II

CLA-II: Civilians in Civil Defense: Authority, Delegation, and Discipline

10 Introducing Civilians in Civil Defense

The second part of this course series will expand on the introductory course by looking at the definitions of authority, delegation, and discipline, particularly in how it affects our role as non-peace-officer volunteers. Where do we get our authority? What are its limits? What constitutes a lawful order? How do

we maintain discipline? Without an understanding of these issues, officers and non-commissioned officers cannot effectively function.

Controversial Topics

This course deals with controversial and emotionally-charged topics. Emergency volunteers, by their nature, are employed in difficult, sometimes horrific, circumstances which probe at the edges of our social order. Disasters bring out the very best and very worst of people. This course aims to help prepare volunteers to deal frankly with these issues and act in a leadership role when other people may not be acting rationally.

Purpose of the Class

- To be an officer, or a non-commissioned officer, you must understand authority:
 - Where it comes from;
 - What its limits are;
 - How discipline is maintained;
 - What does leadership require?

11 Officers, Authority, and Chain-Of-Command

Understanding Officers

- CLA-I is for all volunteers;
- This level focuses on officers;
- *What is an officer?*

Officer

Definitions 11. 1. a person who holds a position of rank or authority in the army, navy, air force, or any similar organization especially one who holds a commission.

4. a person appointed or elected to some position of responsibility or authority in the government, a corporation, a society, etc. — Dictionary.com

Notice the word *commission*, what is a *commission*?

Definitions 12. 1. *commission*:

3. authority granted for a particular action or function.
4. a document granting such authority.

Officer Holds Commission

- Commission grants authority for particular function;
- Function involves 'responsibility';
- Officer holds authority and exercises responsibility *for* the Sheriff;
- Officer is a leader within a realm of specific tasks;

Whose Authority?

An officer is a proxy for authority held by *the people* themselves.

An officer in the Auxiliary is a volunteer who holds a 'commission'. This is more than a nice piece of paper signed by the Sheriff that you can frame: a commission grants authority for a particular action or function, and according to definition four of 'officer', this involves responsibility. An enlisted volunteer is 'enlisted' to assist the Sheriff carry out his responsibilities. An officer is commissioned to exercise authority and hold responsibility for the Sheriff. In other words, an officer is a leader within the realm of the tasks delegated to us by the Sheriff and a leader expected to be held accountable in turn to his or her superiors (the Sheriff, the County government, the people who elected that government).

Under our system of government, an officer is a proxy for authority held by the people themselves. The people, as a nebulous collective, cannot exercise authority effectively; someone has to actually be on the spot to make the decisions that get things done. The people elect government, the government creates law and policies, and officers are appointed to support those laws and policies within the limits of their delegated authority. Officers, as needed, enlist additional assistance to discharge their office.

To be an effective officer, know ye:

Source What is the source of the delegated authority?

Responsibilities What responsibilities constitute the office to be carried out?

Limits What are the limits of your and your superior's authority?

Chain-Of-Command What is the chain-of-command to determine who is in charge at any particular point in time?

Accountability Through what mechanisms will you be held accountable to the people whose authority you have been entrusted with?

11.1 Source

Where did this start?

- Officer always commissioned by elected official(s);
- US military officers recommended by Pres. via SecDef, approved by Congress;
- MO National Guard, Governor recommends, legislature approves;
- In Auxiliary, Sheriff is the elected official:
 - Command staff recommends;
 - Sheriff approves;

In the Auxiliary, the Sheriff is our elected official and must personally approve commissions because it is his authority which is being delegated on behalf of his constituents. The Commander or the Chief of Staff recommends officer candidates to the Sheriff which have been vetted by our established procedures. Let's look at the standard format for officer recommendations:

In accordance with your request to organize a volunteer auxiliary under the Lawrence County Sheriff's Office, and in conjunction with the Mission Statement and Organizing Document of this date, the following list of officer candidates is submitted for approval.

...

I hereby solemnly affirm that these candidates are, to the best of my knowledge and belief: honorable citizens, exemplary members of the community, willing of faithful service, not judicially barred from service under arms, and shall be a credit to both the Office of Sheriff and the LCS Auxiliary; attesting on my own honor to the same.

Straight off, we see the source of our authority in recommending officers: the Sheriff has made a request to organize an auxiliary. The auxiliary was embodied in its organizing documents (which are periodically approved by the Sheriff), and, in accordance with those documents, we are submitting candidates for the Sheriff's approval. The last part defines the character required of officers and follows a traditional format. The officers exist to fulfill an office, a "a position of authority, trust, or service, typically one of a public nature" (definition 5), given to the Sheriff by the people and delegated to us in turn. We discussed the origins and authority of the Office of the Sheriff in CLA-I.

11.2 Responsibilities

Special Trust and Confidence

"...reposing special trust and confidence in the patriotism, valor, fidelity, and abilities of..."

“...will therefore carefully and diligently discharge the duties... and performing all manner of things thereunto belonging...” Our officers’ commissions contain the following:

Know Ye, that reposing special trust and confidence in the patriotism, valor, fidelity and abilities of [Candidate], I do appoint him a [Rank] in the Lawrence County Sheriff’s Auxiliary to rank as such from the [Date]. This Officer will therefore carefully and diligently discharge the duties of the office to which appointed by doing and performing all manner of things thereunto belonging.

So, our responsibilities are to carry out the orders of the Sheriff within the tasks appointed, which, from the previous quotes, we know to be ‘in accordance with his request’ to organize an auxiliary and defined by the Mission Statement and Organizing Document.

Therefore, “...all manner of things therunto belonging...” includes those tasks listed in the documents.

thereunto belonging includes:

- routine tasks, e.g. neighborhood patrols, to free up deputies and funding;
- rear-area tasks in emergency, freeing up deputies;
- forward relief tasks allowing deputies to concentrate on law-enforcement/investigation;
- etc.

11.3 Limits

All authority has limits. What are the limits of Auxiliary officers?

And this Officer is to observe and follow such orders and directives, from time to time, as may be given by me, or the future Lawrence County Sheriff, or other Superior Officers acting in accordance with the laws of the State of Missouri and Lawrence County. This commission is to continue in force during the pleasure of the Lawrence County Sheriff for the time being, under the provisions of the organizational documents of the Auxiliary and the component thereof in which this appointment is made.

So, we have orders and directives of the Lawrence County Sheriff and of other Superior Officers who are in turn limited by the laws of the State of Missouri and Lawrence County. Any of these define the limits of an officer’s authority. As discussed in CLA-I, the ‘laws of the State of Missouri and Lawrence County’ are themselves limited by the Constitutions (US and state) which define our system of government. All officers take an oath that ‘I will support and defend the Constitution of the United States and that of the State of Missouri, against all

enemies, foreign and domestic; that I will bear true faith and allegiance to the same...'. It should be noted that the Sheriff is empowered by law to delegate all or part of his authority to others to carry out his duties. The Sheriff, in particular, is empowered to enforce law, investigate crimes, detain or arrest, to serve summons, and to execute the orders of the courts (liens, judgements, etc.). Deputies, by definition ("a person whose immediate superior is a senior figure within an organization and who is empowered to act as a substitute for this superior"), inherit all of his authority in these regards. According to our Organization Documents and according to Missouri law, officers of the Auxiliary do not receive these authorities. We are not Licensed Peace Officers (LPOs) and are not therefore empowered on our own to enforce law, to detain or arrest, to serve summons, or to execute the orders of the courts. We can assist the Sheriff or a Deputy (or potentially some other LPO) in doing these things, but we have no authority in these matters in and of ourselves unless and until deputized and then only temporarily within the confines of that emergency. Even within these limits, an order from an officer, whether from an officer of the Auxiliary to a subordinate or from the superiors over the Auxiliary, namely the Sheriff and his Deputies, is void and without force if it does not comply with the law and with the Constitutions which underly the authority of the law itself. This limit directly conflicts with the concept of Chain-of-Command and intentionally so. We are not made to take an oath to serve the Sheriff and then let him sort out the Constitutional issues; the Constitution requires every officer of every kind to individually swear to uphold it.

United States v. Calley and Defense of Superior Orders

On 16 March 1968, a large number of unresisting Vietnamses were herded into a ditch just outside Mai Lai and summarily executed by American soldiers. Lt. Calley received orders from a Cpt. Medina to execute Vietnamese civilians in the village and carried out these orders with respect to between 75 and 100 villagers. Calley was charged with murder, tried, and convicted. Lt. Calley defended his actions by stating that he was following orders of a superior officer and therefore was not responsible for his actions (and the actions of the men under his orders in turn).

The United States Court of Military Appeals heard the case and rejected Calley's defense, upholding the convictions for murder[United States v. Calley, 46 C.M.R. 1131 (1973)].

Lieutenant Calley's defense was that he was obeying the orders of his superior officer, Captain Medina. Because he was not free to disobey the orders, Calley maintained, he was not responsible for the Mai Lai massacre. He was therefore coerced into killing. Rejecting Calley's defense, the court ruled that every person must accept responsibility for killing. No one who obeys the order to kill can transfer responsibility. Despite the need for military discipline, which is admittedly great, the court held that officers must disobey clearly illegal orders, particularly when they lead to death. Samaha [1996, pp 253-254; this case is not covered in later editions.]

11.4 Chain-Of-Command

From Dictionary.com:

a series of administrative or military ranks, positions, etc., in which each has direct authority over the one immediately below.

Because more than one person is given authority, there has to be some way to know who is in charge at any particular moment. Off the field, we may have the leisure to deliberate and work collaboratively; in the context of an emergency, we probably do not have that luxury: we may still collaborate and deliberate when and where we may, but someone has to make the decision and ensure that the whole structure focuses on the mission. This is the purpose of ranks in the service and it is the purpose of uniforms, badges, ids, name-tags, etc.: they are emblems of authority. A uniform and particular insignia defines the kind of authority you have been delegated (you are an officer of the Lawrence County Sheriff's Auxiliary), the level of your authority within the hierarchy (your rank and insignia), and your level of training or specific authorities you have been tasked with (your service pins).

Again, from our commission:

And I do strictly charge and require those Officers to render such obedience as is due an officer of this position. And this Officer is to observe and follow such orders and directives, from time to time, as may be given by me, or the future Lawrence County Sheriff, or other Superior Officers...

Within the Auxiliary, and within the Sheriff's Office, there is a clear ordering from top to bottom over who is in charge (well, mostly: we'll get to the exceptions). When we work with other agencies, say coordinating on a single incident response, we work under the principles of the Incident Command System (ICS) and unity of command:

The concept by which each person within an organization reports to one and only one designated person. The purpose of unity of command is to ensure unity of effort under one responsible commander for every objective.

and there is still (or should be) a clear hierarchy from the Incident Commander all the way down.

Under the principles of ICS, rank and seniority do not define position within the response, so, for instance, a Major in the Auxiliary can be under the orders of a Corporal of police (and, indeed, that exact situation occurs when working under the Sheriff's Office as well) or a volunteer fireman, an EMT, or a rank-and-file CERT volunteer. What is important is that the Incident Commander assigns positions within the structure and each member of the team knows precisely who their superior is from their direct supervisor all the way up the chain-of-command. Teams work together to fulfill assigned objectives.

Within self-contained units composed of Auxiliary volunteers, we will generally follow our usual rank structure (...except when we don't, but, again, we'll get to that). Chain-of-command also defines legal responsibility. We not only need someone to make the decision, we need someone to take responsibility for that decision, and if necessary, someone whose feet get held to the fire if the decision goes wrong. One's position within the structure, and therefore, one's precise responsibilities can change throughout an emergency. In emergencies, as in military action, members of the chain-of-command can become injured or incapacitated. A defined chain-of-command determines who assumes authority and what authority they assume when their superior is suddenly not there. If a team-leader becomes incapacitated, the second-in-command takes charge. If the Communications Officer becomes injured, a specific subordinate will generally take over.

William Sitgreaves Cox and the USS Chesapeake

Under particularly dire circumstances--- and disasters are by definition dire--- a low-ranking officer can suddenly end up in an unexpected position. Take the situation of one William Sitgreaves Cox, who was a Temporary Third Lieutenant (the lowest of the low, below our Junior Grade Lieutenant) in charge of a gun crew on the USS Chesapeake during the War of 1812. In a battle with the HMS Shannon in 1813, every single one of his superiors up to and including the Captain was wounded and incapacitated. He left the deck to carry his wounded captain to the infirmary. At that moment, however, he was in command of the ship and did not know it. By taking Captain Lawrence below decks, he unintentionally abandoned his post. Confusion over command caused the ship to be captured by the British. Lt. Cox was tried, court-martialed, cashiered from the service and lived in disgrace. While this may seem harsh, it was Lieutenant Cox's responsibility to know the chain-of-command and to determine who was in charge before leaving his post. His error was simple but grave.

Patient Abandonment

We do not operate under the same circumstances as Lt. Cox, but we can end up in roughly analagous situations. One such has to do with patient abandonment. When a medical professional or responder (including an Auxiliary volunteer performing first aid or assisting in Search and Rescue) is caring for a victim, they may not simply abandon the patient without handing off responsibility to someone else. Abandonment can result in civil and sometimes criminal penalties. That means that a volunteer may not simply leave a victim and assume that someone is caring for them; responsibility must be clearly handed off. If you are assisting at a treatment area and a second disaster strikes, leaving your superiors incapacitated, it is your responsibility to determine who is in charge, to inform your new superior or to take responsibility yourself until relieved, requesting help if you are unable or unqualified to discharge your new duties.

Formalities of Command Transfer

This is one of the reasons for the formalities of transferring command. Because legal responsibility is involved with chain-of-command, when it changes, it must be formally recognized in some fashion. ICS requires that an incoming Incident Commander must be briefed by the current IC and that the transfer of command must be announced. This same form must be followed at other levels of supervision: when watches change, when an arriving EMT takes responsibility for a volunteer's victim, when a deputy arrives at the accident where you were first-on-scene, etc. If this is not observed, you are no longer in charge, but you may end up still being held responsible for what happens. Briefings may be written or oral as dictated by circumstances. Sometimes the formalities may be very short, including the traditional: "I relieve you, sir," "I stand relieved," but they must be observed in all circumstances. For example, when handing over the care of a victim to an arriving doctor: "Doctor, your patient is Emily Jones, 36. She was injured when she was thrown clear of her car, has severe lacerations, contusions, and a probable head-neck injury. She has been breathing but not responsive, and her pupils are not dilating. We have immobilized her head and neck and stopped the bleeding. We found a Medic Alert bracelet and she is diabetic." This is a short, complete briefing and it also transfers responsibility with the words "your patient". You are making it clear that you are passing care for the victim to someone of greater skill and giving them the information they need to continue care. You may end up in situations where you are forced to abandon a victim or a post. A good example would be when you hear the bug-out signal during search-and-rescue. At the start of the mission, you will be told that a specific signal (e.g. two long blasts on a whistle) means "get out now" because the area is unsafe. It may mean that a second tornado is coming through, that a structure is about to collapse, or a gas leak has been detected. You may be caring for a victim you cannot move, guarding a supply cache, or performing some other task for which you are legally responsible. Clearly, in that case, you must follow standing orders and abandon your post, possibly locking or securing as you go, however, you must immediately discharge your responsibility by reporting to your superior and you must clearly document the responsibilities you have abandoned (in activity log and debriefing).

For instance, you must immediately report the number, locations, and conditions of victims you have left behind or of critical equipment you have abandoned and obtain some acknowledgement of the fact. You may have received specific instructions in your mission briefing on how to handle evacuation or you may receive instructions when the evacuation is signaled, for example, to move victims who may be moved or to disable/destroy firearms left behind when abandoning a patrol car or field locker. If you do not have specific instructions or there is an unanticipated problem and you have the means to communicate, you must do what you can to clarify your responsibilities: "Zone-2 Command, we have a victim with a probable spinal injury which has not been immobilized. Do you wish us to move the victim, over?" Your superior will then make the call on whether to stay with the victim, take the time to immobilize, move the victim, or leave

the victim temporarily. As an officer, you have to deal with these situations where your orders-of-the-moment conflict with your assigned responsibilities. You have to get clarification if you can and make your best call if you cannot. But, as an officer, you also have to deal with the reciprocal situation of giving orders and assigning responsibilities to those under your command. That means that it is your job to ensure that your mission briefings or your evacuation orders give your subordinates the information they need to make the correct call (or, at least, 'the best call possible under the circumstances'). That is why we have five-paragraph op orders and ICS forms for team assignments, why we practice giving briefings: they give us a structure to ensure that our orders cover the issues they must cover to be carried out effectively, efficiently, and correctly. If you do not give team members instructions on what to do if they bug out, you are responsible for the actions they take under your orders.

Exceptions To the Chain-of-Command

We have mentioned several times that there are exceptions to the strict chain-of-command. These primarily deal with authority under certain defined specialties, such as medical practitioners, Master-Of-Arms, Law Enforcement Officers, and Safety Officers, etc. These are specialists who are given specific and overriding authority within their specialties. In specific cases, those specialties trump any other authority. For example, the senior, most-experienced medical practitioner present may assert authority over a medical issue. If the President of the United States comes down on an incident and tells you to move a patient, and the doctor standing there says, "this patient cannot be moved," then you defer to the doctor, even if the doctor is not your superior, until the situation is sorted out. When the Safety Officer tells your crew to stop activity, you stop, period. On issues of range or weapon safety, you defer to the Master-of-Arms or Range Master, regardless of rank or structure. Within the Auxiliary itself, these specialists may only be overruled on their specialty if their superior officer relieves them of duty and replaces them. If you are that superior officer, you may do so, if, for instance, you know that the patient is sitting on a ticking time bomb and that moving them is the better option even if it cripples them for life, but understand that your actions will be formally reviewed and you must be absolutely certain that you are making the right call. If you are the specialist in that circumstance, you have the same responsibility to only take a stand when it is absolutely necessary to do so and to explain why if circumstances permit. If circumstances allow it in any fashion, the specialist and the officer in charge must work together to come up with an agreeable solution ("OK, the Safety Officer says we can't continue working. Can we obtain appropriate protective equipment and come back? Can we get someone from HazMat to evaluate the risks? How far back do we have to set our perimeter?") When you encounter conflicts and exercise authority, every effort must be taken to document it so that your decision can be evaluated after the fact. Why did you leave the victim behind in the building? When were you ordered to evacuate? By whom? One of the responsibilities of an officer is to make sure that paperwork is done and

records are complete, delegating that task when necessary. Are you making sure that your teams have someone assigned to be a scribe? Have your teams been given appropriate forms? Have you debriefed team members and made sure that an activity log is submitted? Did everyone sign out of the incident before leaving? This is the less-glorious-but-still-important part of having a commission. If something goes wrong, those pieces of paper might be all that is available to try to sort out the problem: Lt. Smith hasn't been seen since yesterday; did they leave the incident without signing out... or are they still somewhere in the field, possibly incapacitated or dead? Suddenly that annoying piece of paper is very important.

11.5 Accountability

12 Discipline and Offenses

13 Changing Roles

References

Yamiche Alcindor. George Zimmerman found not guilty, jul 2013. URL <http://www.usatoday.com/story/news/nation/2013/07/13/george-zimmerman-found-not-guilty/2514163/>.

Lizette Alvarez. Martin Was Shot as He Leaned Over Zimmerman, Court Is Told, jul 2013. URL <http://www.nytimes.com/2013/07/10/us/teenager-was-over-zimmerman-as-he-was-shot-expert-says.html>.

H.S. Bennett. *Life on the English Manor: A Study of Peasant Conditions 1150-1400*. Cambridge University Press, London, 1938. URL <https://archive.org/details/lifeontheenglish020976mbp>.

William Blackstone. *Commentaries on the law of England*, volume 1. The Online Library of Liberty, e-book edition, 1753. URL <http://scholar.google.com/scholar?hl=en{%&}btnG=Search{%&}q=intitle:Commentaries+on+the+Law+of+England{%#}4>.

Ana Campoy. Self-Defense Case: Pharmacist Guilty, may 2011. URL <http://www.wsj.com/articles/SB10001424052702303654804576347891729253696>.

Nolan Clay. Druggist Jerome Ersland released after supporter arranges bail, may 2009. URL <http://newsok.com/druggist-jerome-ersland-released-after-supporter-arranges-bail/article/3373432>.

Constitution Society. The Magna Carta (The Great Charter), 2003. URL <http://constitution.org/eng/magnacar.pdf>.

Maria Counts. Supreme Court rules county sheriff has no arrest powers, oct 2013. URL <http://www.coastalpoint.com/content/supreme{ }court{ }rules{ }county{ }sheriff{ }has{ }no{ }arrest{ }powers>.

Erin Donaghue. George Zimmerman Trial: Experts say self-defense claim could be tough to refute in Trayvon Martin killing, jun 2013. URL <http://www.cbsnews.com/news/george-zimmerman-trial-experts-say-self-defense-claim-could-be-tough-to-refute-in-trayvon>

Matt Getz. Stand Your Ground And The Zimmerman Defense, 2013. URL <http://mediamatters.org/blog/2013/07/15/stand-your-ground-and-the-zimmerman-defense/194870>.

Steven H. Gifis. *Barron's Law Dictionary*. Barron's Educational Series, New York, NY, 6th, kindl edition, 2010. ISBN 9780764143588. URL <http://www.amazon.com/Law-Dictionary-Trade-Barrons-Quality-ebook/dp/B004ASNFKZK/ref=mt{ }kindle>.

Stephen P. Halbrook. *That Every Man Be Armed: the Evolution of a Constitutional Right*. University of New Mexico Press, Albuquerque, NM, revised an edition, 2013. ISBN 978-0-8263-5299-6.

David B Kopel. The Self-Defense Cases : How the United States Supreme Court Confronted a Hanging Judge in the Nineteenth Century and Taught Some Lessons for Jurisprudence in the Twenty-First. *American Journal of Criminal Law*, 27(293):293-296, 2000. URL <http://www.davekopel.org/2A/LawRev/TheSelf-DefenseCases.pdf>.

Pauline Maier. *Ratification— the People Debate the Constitution, 1787-1788*. Simon and Schuster, New York, 2010.

David AJ Richards. *Foundations of American Constitutionalism*. Oxford University Press, New York, 1989.

Joel Samaha. *Criminal Law*. West Publishing, St. Paul, MN, 5th edition, 1996.

Eric Vought. Armed To the Terror of the People: Where Do We Draw Lines?, 2015. URL <http://radishsaltant.blogspot.com/2014/05/armed-to-terror-of-people-where-do-we.html>.