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# Unusual Allies in a Legal Battle Over Texas Drivers' Gun Rights

By [RALPH BLUMENTHAL](#)

HOUSTON, April 4 — Keith Patton was driving home one night in February when police officers pulled over his red Ford Explorer for a traffic stop.

His license and insurance form were in his gym bag on the floor near the back seat. Under the bag was a .357 Magnum.

Mr. Patton, 51, an oil-field geologist, software tester and martial arts instructor from suburban Katy, told the police about the gun, which he said he had bought hours before from a co-worker for target shooting. Moments later, he was handcuffed and on his way to jail, facing a charge of unlicensed carrying of a weapon.

The arrest might have been routine elsewhere, but this is [Texas](#), where a code rooted in the days of the highwayman recognizes the right of travelers to be armed, and the Legislature has repeatedly endorsed that principle.

Defiant police officers and prosecutors, however, saying they retain law enforcement discretion, have continued arresting and bringing cases against motorists like Mr. Patton found with unlicensed handguns.

The conflict has led to a legal standoff and a new effort by legislators to resolve the issue. It has also inspired an unlikely alliance between the gun lobby, which has long drawn support from the political right, and civil liberties advocates, long identified with the left, in defense of pistol-packing travelers.

In a report issued in February, the Texas affiliate of the [National Rifle Association](#) joined the [American Civil Liberties Union](#) of Texas and the Texas Criminal Justice Coalition “to spotlight unlawful, unnecessary governmental encroachment on average law-abiding citizens.”

The report, “Above the Law: How Texas prosecutors are placing their own judgment over that of the Legislature and the law of the land,” found that district and county attorneys had instructed police officers to “unnecessarily” interrogate drivers and arrest them or take their weapons, “even if they are legally carrying the gun.”

“It’s all the self-interest of the job,” said Scott Henson, a civil liberties advocate and blogger who wrote the report. Mr. Henson contends that police officers are opposed to citizens’ carrying guns and that prosecutors depend on gun charges to strengthen weak cases and prompt plea bargains.

Like many other states, Texas bans the carrying of concealed handguns without a license. Obtaining a license requires a background check and a gun-safety course. By long-established law, however, Texans can cite “traveling” as a defense to possession of an unlicensed handgun. But while traveling was widely understood to denote a journey of some distance, it was never defined. (Travel on planes and other interstate conveyances banning weapons falls under federal jurisdiction.)

In 1997, the State Legislature tried to clarify the law by removing unlicensed carrying of a weapon as an offense while traveling. But it left unresolved whether traveling required making an overnight stop, crossing county lines or other conditions.

In 2005, lawmakers sought to remove the ambiguity by declaring that anyone in a private vehicle who was not engaged in criminal activity or otherwise barred from possessing a firearm was “presumed to be traveling,” and thus exempt from restrictions on concealed handguns.

Terry Keel, a former member of the Texas House of Representatives who sponsored the bill, explained its intent in a statement entered into the record: “In plain terms, a law-abiding person should not fear arrest if they are transporting a concealed pistol in a motor vehicle.”

But the measure hardly ended the controversy.

Almost as soon as it became law in September 2005, the Texas District and County Attorneys Association signaled its displeasure by advising members that the act did not rule out arrests of otherwise law-abiding drivers carrying weapons. The association said it was up to the courts to determine whether a person was, in fact, traveling. “Therefore,” it declared, “officers are still acting within their lawful discretion if they arrest a person who might qualify for the traveling defense or the new traveling presumption.”

Or, as Charles A. Rosenthal Jr., the district attorney of Harris County, which includes Houston, argued, “The presumption of innocence does not make the person innocent.”

Now, critics of the district attorneys are backing legislation that would sidestep such issues. A bill before the Texas House would treat personal vehicles like homes, where people are entitled to keep handguns without a license. It would create an exception to the handgun ban for anyone “inside of or directly en route to a motor vehicle” owned by the person or under his control.

Will Harrell, the executive director of the American Civil Liberties Union of Texas, said that even before the current dispute, his group and the N.R.A. had been collaborating on racial profiling issues, particularly on what he called a “Bubba profile” that made certain white men the focus of gun checks by the police.

Consequently, Mr. Harrell said, the A.C.L.U. of Texas, the Texas State Rifle Association and the Criminal Justice Coalition filed public information requests with more than 300 district and county attorneys for any advisories on the vehicle handgun law given to local law enforcement officers. Many did not respond or said they had no guidelines, but 13 acknowledged instructions to continue arresting drivers with unlicensed guns or to take their weapons.

Mr. Harrell said the collaboration with the Texas State Rifle Association came easy. “I find working with strange bedfellows more comfortable than with those we most often agree with,” he said. And, he said, “the police don’t know what to think of it.”

Alice Tripp, the legislative director for the rifle association, conceded that the groups had been seen as an odd couple. “Everybody kind of went, ‘Oh my God, what’s the A.C.L.U. doing here with the gun people?’ ” Ms. Tripp said. But she said they had found common ground on self-defense as an endangered liberty.

Mr. Rosenthal, widely regarded as Texas’ most influential district attorney, said a police officer was right to continue inquiring into the travel particulars of an armed driver without a concealed handgun permit. “The presumption is he may be traveling,” he said. “Whether he is is a jury question.”

Tim Curry, the criminal district attorney in Tarrant County, which includes Fort Worth, concurred, according to the report, which quoted him as advising the police, “A trip to the grocery store with plans to return home does not constitute traveling.”

Mr. Keel disagreed. “It’s no longer an issue of how far you’re going,” he said. “The Legislature ended that debate.”

That view was small comfort to Mr. Patton, who won dismissal of his charges but spent a night in jail and was out not only his \$300 pistol but also \$1,500 to his lawyer, Samuel Cammack III, and \$268 for the towing and impoundment fee for his Ford Explorer.

Almost worse was the mortification. “Everyone thinks this is the Wild West,” Mr. Patton said. “My dad was incredulous. He said, ‘I thought you lived in Texas.’ ”

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