Approved 2/14/83
Date

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Senator Edward F. Reilly, Jr. at
Chairperson

11:00 a.m. on February 11, 1983 in room 254-E of the Capitol.

All members were present except: Senators Parrish and Pomeroy, who were excused.

Committee staff present: Fred Carman, Assistant Revisor of Statutes
Russell Mills, Legislative Research
Emalene Correll, Legislative Research
June Windscheffel, Committee Secretary

Conferees appearing before the committee: Larry Humes, Lawrence, Kansas
Tom Welsh, K. U. Sailing Club, Lawrence, Kansas
James W. Clark, Kansas County & District Attorneys Association
Colonel David Hornbaker, Kansas Highway Patrol

The Chairman announced that SB 186 was first on the agenda. Senator Reilly introduced the bill at the request of those who participate in water sports. Larry Humes appeared as a proponent of the bill, and distributed information concerning sailboards (windsurfers) to the effect that they have none of the safety hazards of boats that make carrying an additional flotation device necessary and useful. See attached. (Attachment #1) Tom Welsh also appeared as a proponent of the bill and explained the operation of a windsurfer, with a windsurfer in the committee room as a visual aid. The proponents responded to many questions from the committee.

James W. Clark appeared with proposed legislation concerning Exclusionary Rule Limitations: admissibility of evidence obtained as a result of an unlawful search or seizure and concerning the admissibility of evidence in criminal proceedings. Senator Meyers moved that the proposal be introduced as a committee bill. 2d by Senator Francisco. Motion carried. The proposal is attached. (Attachment #2).

Senator Winter moved that the committee introduce as a committee bill a bill that would standardize and allow for non-binding referendum at general elections. 2d by Senator Francisco. The motion carried.

Colonel David Hornbaker appeared concerning the question as to whether or not members of the Kansas Highway Patrol might accept additional employment when not on duty. Copies of an opinion from the Attorney General of Kansas, dated August 6, 1974, were distributed, and asked if there needed to be clarification of legislative intent concerning patrol employees. The Opinion No. 74-264 is attached. (Attachment #3.). Colonel Hornbaker said that he had given permission to various members of the patrol to have employment such as being self-employed or to contract for employment, such as teaching school, and had no problem with the statute as it now stands.

Senator Gannon moved that a committee bill be introduced to allow Kansas citizens to purchase 2 litres of out of state liquor for their own family and personal use. 2d by Senator Winter. Motion carried.

The meeting adjourned at 12:00 noon.

Minutes of
February 11, 1983
Attachment #1

Sailboards (eg. Windsurfers) have none of the safety hazards of boats that make carrying an additional flotation devise necessary and useful of boats.

1. CAPSIZE IMPOSSIBLE by definition: There is no cockpit to fill; the board floats as well upside down as right side up.

2. WON'T SINK: Extremely durable; can't deflate; no air tanks to puncture and fill; no foam to fall out; will float as well even if chopped to pieces.

3. CAN'T SAIL AWAY like a motor boat with a jammed throttle; like a sailboat with a well balanced helm and cleated sheets; won't even drift rapidly because sail falls immediately to water when released and acts as a sea anchor.

4. SERIOUS INJURY UNLIKELY (eg. to the head): Rig has no heavy (metal) parts; board is constructed of expanded foam very similar to that used to pad motorcycle helmets; rig falls to water immediately when released and doesn't flail dangerously.

5. WINDSURFING & SWIMMING GO HAND-IN-HAND: Non-swimmers won't be on sailboards; people will not be out in conditions for which they are not prepared (eg. cold weather or cold water without a wetsuit).

6. BETTER FLOTATION THAN PFDs: PFDs are designed, at best, to float one victim's head and shoulders above the water; A Windsurfer will float the entire bodies of two victim's clear of the water; won't drift as rapidly from a victim as a PFD in a blow or a strong current.

7. USED AS A RESCUE DEVISE BY RED CROSS: Sailboards are of a nearly identical construction to rescue boards used by the Red Cross in their Lifesaving and Water Safety courses; the board can be used as effectively to rescue yourself as rescue others.

8. WINDSURFERs ARE CLASSIFIED AS SURFBOARDS, NOT AS BOATS: In states where sailboards have been popular for some time (eg. California, Hawaii) they have received a special classification and additional flotation in the form of a PFD is not required.

Prepared by: Tom Welsh, Defendant
Water Safety Instructor, American National Red Cross
Sailing Instructor, K.U. Sailing Club
Sailing Instructor, Lawrence Continuing Education

Atch. 1

Minutes of Meeti of 2/11/83
Attachment #2

_____ BIIL NO. _____

AN ACT concerning Exclusionary Rule Limitations: Admissibility of evidence obtained as a result of an unlawful search or seizure.

AN ACT concerning the admissibility of evidence in criminal proceedings.

Be it enacted by the Legislature of the State of Kansas:

Section 1. It is hereby declared to be the public policy of the State of Kansas that when evidence is sought to be excluded from the trier of fact in a criminal proceeding because of the conduct of a police officer leading to its discovery, that it will be open to the proponent of the evidence to urge that the conduct in question was taken in a reasonable, good faith belief that it was proper, and in such instances the evidence so discovered should not be kept from the trier of fact if otherwise admissible.

Section 2. Evidence which is otherwise admissible in a criminal proceeding shall not be suppressed by the trial court if the court determines that the evidence was seized by a law enforcement officer as a result of a good faith mistake or a technical violation.

Section 3. As used in subsection (1) of this section:

(a) "Good faith mistake" means a reasonable judgmental error concerning the existence of facts which if true would be sufficient to constitute probable cause.

(b) "Technical violation" means a reasonable good faith reliance upon a statute which is later ruled unconstitutional, a warrant which is later invalidated due to a good faith mistake, or a court precedent which is later overruled.

Atch. 2

Section 4. Evidence which is otherwise admissible in a criminal proceeding and which is obtained as a result of a confession voluntarily made in a noncustodial setting shall not be suppressed by the trial court.

Section 5. This act shall take effect and be in force from and after its publication in the statute book.

ISSUED BY
ROSE MOFFORD
SECRETARY OF STATE

State of Arizona
House of Representatives
Thirty-fifth Legislature
Second Regular Session
1982

CHAPTER 161

HOUSE BILL 2106

AN ACT

RELATING TO CRIMES; PRESCRIBING THE ADMISSIBILITY OF CERTAIN EVIDENCE OBTAINED THROUGH AN ILLEGAL SEARCH OR SEIZURE; PRESCRIBING STANDARDS, AND AMENDING TITLE 13, CHAPTER 38, ARTICLE 8, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-3925.

Be it enacted by the Legislature of the State of Arizona:

Section 1. Title 13, chapter 38, article 8, Arizona Revised Statutes, is amended by adding section 13-3925, to read:

13-3925. Admissibility of evidence obtained as a result of unlawful search or seizure

A. IF A PARTY IN A CRIMINAL PROCEEDING SEEKS TO EXCLUDE EVIDENCE FROM THE TRIER OF FACT BECAUSE OF THE CONDUCT OF A PEACE OFFICER IN OBTAINING THE EVIDENCE, THE PROPONENT OF THE EVIDENCE MAY URGE THAT THE PEACE OFFICER'S CONDUCT WAS TAKEN IN A REASONABLE, GOOD FAITH BELIEF THAT THE CONDUCT WAS PROPER AND THAT THE EVIDENCE DISCOVERED SHOULD NOT BE KEPT FROM THE TRIER OF FACT IF OTHERWISE ADMISSIBLE.

B. THE TRIAL COURT SHALL NOT SUPPRESS EVIDENCE WHICH IS OTHERWISE ADMISSIBLE IN A CRIMINAL PROCEEDING IF THE COURT DETERMINES THAT THE EVIDENCE WAS SEIZED BY A PEACE OFFICER AS A RESULT OF A GOOD FAITH MISTAKE OR TECHNICAL VIOLATION.

C. IN THIS SECTION:

1. "GOOD FAITH MISTAKE" MEANS A REASONABLE JUDGMENTAL ERROR CONCERNING THE EXISTENCE OF FACTS WHICH IF TRUE WOULD BE SUFFICIENT TO CONSTITUTE PROBABLE CAUSE.

2. "TECHNICAL VIOLATION" MEANS A REASONABLE GOOD FAITH RELIANCE UPON:

(a) A STATUTE WHICH IS SUBSEQUENTLY RULED UNCONSTITUTIONAL.

(b) A WARRANT WHICH IS LATER INVALIDATED DUE TO A GOOD FAITH MISTAKE.

(c) A CONTROLLING COURT PRECEDENT WHICH IS LATER OVERRULED, UNLESS THE COURT OVERRULING THE PRECEDENT ORDERS THE NEW PRECEDENT TO BE APPLIED RETROACTIVELY.

D. THIS SECTION SHALL NOT BE CONSTRUED TO LIMIT THE ENFORCEMENT OF ANY APPROPRIATE CIVIL REMEDY OR CRIMINAL SANCTION IN ACTIONS PURSUANT TO OTHER PROVISIONS OF LAW AGAINST ANY INDIVIDUAL OR GOVERNMENT ENTITY FOUND TO HAVE CONDUCTED AN UNREASONABLE SEARCH OR SEIZURE.

E. THIS SECTION DOES NOT APPLY TO UNLAWFUL ELECTRONIC EAVESDROPPING OR WIRETAPPING.

Approved by the Governor - April 20, 1982

Filed in the Office of the Secretary of State - April 20, 1982

CHAPTER 188

CRIMINAL PROCEEDINGS

ARREST — SEARCHES AND SEIZURES

HOUSE BILL NO. 1493. BY REPRESENTATIVES Paulson, Robb, Strahle, Reeves, Schauer, Artist, Fine, Hamlin, Hastings, Heim, Lee, Minahan, Spano, Stephenson, Tancredo, Underwood, Winkler, Armstrong, Bledsoe, DeFilippo, DeNier, Faatz, Gillis, Herzog, Johnson, Larson, Lillpop, Mielke, Neale, Rogers, Schieling, Speltz, and Traylor.
also SENATORS Cole, Ezzard, Hefley, Dodge, Allshouse, Beatty, and P. Powers.

AN ACT

CONCERNING THE ADMISSIBILITY OF EVIDENCE IN CRIMINAL PROCEEDINGS.

Be it enacted by the General Assembly of the State of Colorado:

Section 1. Part 3 of article 3 of title 16, Colorado Revised Statutes 1973, 1978 Repl. Vol., is amended BY THE ADDITION OF A NEW SECTION to read:

16-3-308. Evidence - admissibility - declaration of purpose. (1) Evidence which is otherwise admissible in a criminal proceeding shall not be suppressed by the trial court if the court determines that the evidence was seized by a peace officer, as defined in section 18-1-901 (3) (l), C.R.S. 1973, as a result of a good faith mistake or of a technical violation.

(2) As used in subsection (1) of this section:

(a) "Good faith mistake" means a reasonable judgmental error concerning the existence of facts which if true would be sufficient to constitute probable cause.

(b) "Technical violation" means a reasonable good faith reliance upon a statute which is later ruled unconstitutional, a warrant which is later invalidated due to a good faith mistake, or a court precedent which is later overruled.

(3) Evidence which is otherwise admissible in a criminal proceeding and which is obtained as a result of a confession voluntarily made in a noncustodial setting shall not be suppressed by the trial court.

(4) It is hereby declared to be the public policy of the state of Colorado that when evidence is sought to be excluded from the trier of fact in a criminal proceeding because of the conduct of a peace officer leading to its discovery, that it will be open to the proponent of the evidence to urge that the

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

conduct in question was taken in a reasonable, good faith belief that it was proper and in such instances the evidence so discovered should not be kept from the trier of fact if otherwise admissible. This section is necessary to identify the characteristics of evidence which will be admissible in a court of law. This section does not address or attempt to prescribe court procedure.

Section 2. **Effective date - applicability.** This act shall take effect July 1, 1981, and shall apply to all evidence obtained on or after said date.

Section 3. **Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 5, 1981

II

97TH CONGRESS
2D SESSION

S. 2304

To amend title 18 to limit the application of the exclusionary rule.

IN THE SENATE OF THE UNITED STATES

MARCH 30 (legislative day, FEBRUARY 22), 1982

Mr. DECONCINI (for himself, Mr. HATCH, and Mr. THURMOND) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

A BILL

To amend title 18 to limit the application of the exclusionary rule.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) chapter 223 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 3505. Limitation of the Exclusionary Rule

"Except as specifically provided by statute, evidence which is obtained as a result of a search or seizure and which is otherwise admissible shall not be excluded in a proceeding in a court of the United States if the search or seizure was

undertaken in a reasonable, good faith belief that it was in conformity with the fourth amendment to the Constitution of the United States or if to exclude such evidence would constitute a grave miscarriage of justice. A showing that evidence was obtained pursuant to and within the scope of a warrant constitutes prima facie evidence of such a reasonable good faith belief, unless the warrant was obtained through intentional and material misrepresentation.".

(b) The table of sections of chapter 223 of title 18 is amended by adding at the end thereof the following item:

"3505. Limitation of the Exclusionary Rule.".

○

10 impact
Americans for Effective Law Enforcement

LEGISLATIVE REFORM OF THE EXCLUSIONARY RULE: THE GOOD FAITH EXCEPTION

In 1961 the U.S. Supreme Court held, in a 5-to-4 decision, that "illegally seized" evidence was no longer admissible in criminal cases prosecuted by state officials. The ruling was surprising and is not followed in any other country. The principal purpose of the rule is to deter and punish police "misconduct" or disregard of the Fourth Amendment.

No one would seriously urge that police officers should be free to deliberately violate the Constitution in order to secure a conviction, and this aspect of the "Exclusionary Rule" is not really in debate, although some scholars have suggested different methods to deter and punish police misbehavior.

The principal fault of the Exclusionary Rule, as it is presently interpreted, is that it also punishes a **good faith mistake** by an honest and conscientious police officer. The "mistake" might be an inadvertent one, such as the wrong date on the affidavit, or an "incomplete" description of the premises to be searched or the property to be seized.

The Good Faith Exception

In 1980, an en banc federal appeals court was the first to recognize an exception to the Exclusionary Rule. In **United States v. Williams,** the Fifth Circuit said that:

Henceforth in this circuit, when evidence is sought to be excluded because of police conduct leading to its discovery, it will be open to the proponent of the evidence to urge that the conduct in question, if mistaken or unauthorized, was yet taken in a reasonable, good-faith belief that it was proper. If the court so finds, it shall not apply the Exclusionary Rule to the evidence. 622 F. 2d 830, 846-7.

The Fifth Circuit noted that the officer's **subjective** beliefs concerning the legality of a search is not enough. Ignorance of the basic principles of criminal procedure fails the **objective** test of good faith. The police officer's actions must "be based upon articuable premises sufficient to cause a reasonable, and reasonably trained, officer to believe he was acting lawfully." This language places heavy emphasis on the quantity and quality of police training. Future cases in that circuit will examine the preservice training given recruits, in-service training given seasoned officers, and case law bulletins furnished officers on a periodic basis. There will be a strong incentive to insure that all officers are promptly provided with the latest case law affecting police operations.

The Fifth Circuit was split into the Fifth and Eleventh Circuits in 1981; the **Williams** decision is now the law in both circuits. The Supreme Court declined to review the **Williams** decision, and has yet to express an opinion on the good faith exception in search and seizure cases. Assuming an appropriate factual setting, many scholars believe the Supreme Court will eventually adopt a good faith exception, at least by a 5-to-4 majority. A properly worded statute could narrowly frame the issues.

Americans for Effective Law Enforcement, Inc. (AELE) has been an outspoken proponent for the good faith exception. AELE originally urged its views at the Attorney General's Task Force on Violent Crime hearings in 1981. The Task Force later recommended adoption of the good faith exception.

Following the Task Force recommendation, several U.S. Senators introduced bills which would extend the good faith exception to the other ten federal appeals circuits. The present administration has strongly supported such legislation, and a variety of organizations and witnesses (including AELE) have filed position papers and have testified in support of modification proposals.

On June 2, 1982, the head of the Justice Department's Criminal Division, D. Lowell Jensen, noted that the Exclusionary Rule is not required by the Constitution, but is only a court-ordered remedy to deter police misconduct. The Justice Department points out that no conceivable purpose is served by suppressing evidence which has been seized in good faith. In short, there is no reason to "punish" the police and no deliberate

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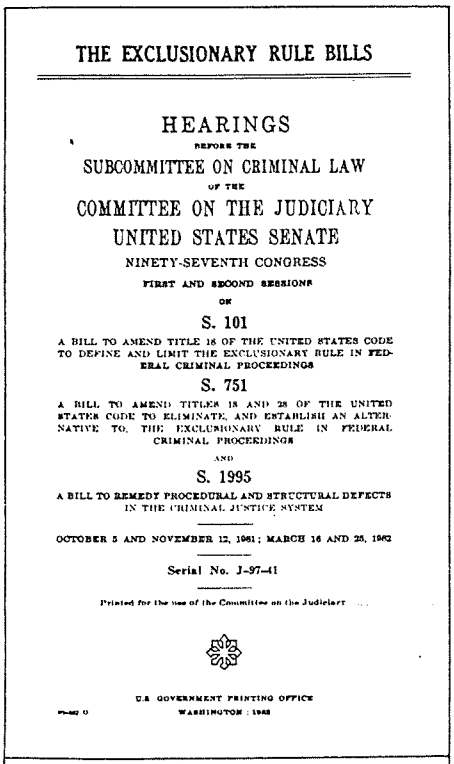

THE EXCLUSIONARY RULE BILLS

HEARINGS
BEFORE THE
SUBCOMMITTEE ON CRIMINAL LAW
OF THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
NINETY-SEVENTH CONGRESS
FIRST AND SECOND SESSIONS
ON
S. 101
A BILL TO AMEND TITLE 18 OF THE UNITED STATES CODE TO DEFINE AND LIMIT THE EXCLUSIONARY RULE IN FEDERAL CRIMINAL PROCEEDINGS
S. 751
A BILL TO AMEND TITLES 18 AND 28 OF THE UNITED STATES CODE TO ELIMINATE, AND ESTABLISH AN ALTERNATIVE TO, THE EXCLUSIONARY RULE IN FEDERAL CRIMINAL PROCEEDINGS
AND
S. 1995
A BILL TO REMEDY PROCEDURAL AND STRUCTURAL DEFECTS IN THE CRIMINAL JUSTICE SYSTEM
OCTOBER 5 AND NOVEMBER 12, 1981; MARCH 16 AND 25, 1982
Serial No. J-97-41
Printed for the use of the Committee on the Judiciary
U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1982

AELE POSITION HEARD IN U.S. SENATE EXCLUSIONARY RULE HEARINGS

Wayne W. Schmidt, AELE Executive Director, testified on March 16, 1982, before the Subcommittee on Criminal Law of the Senate Judiciary Committee. The invitation to present our views came from the chairman, Senator Charles Mathias of Maryland. Several Bills would modify the harsh effects of the evidentiary rule that now prohibits federal courts from considering evidence that has been "illegally" obtained by police or federal agents.

At heart is the so-called "Good Faith Exception" to the rule. The exception was only recently recognized by the federal appeals court that supervises lower level courts in six southern states. Schmidt stated that there is no evidence that officers have abused the good faith test in those states. He pointed to Houston, which averages nearly 100 criminal filings a month. In more than a year, not a single case of police misuse of the good faith exception has been noted. Statistics were also cited for Miami, and again, no police abuse has even been alleged.

The Senate Hearings have recently been printed; the paper-bound book is 837 pages in length. The report contains statements by Committee members of the Senate, testimony of the various witnesses, proposed legislation, prepared statements, supplemental questions and answers transmitted, correspondence, articles and comments received. The report, Serial No. J-97-41, as pictured above, may be obtained from your U.S. Senator.

continued from page 1

misconduct to "deter." The Senate has yet to act on S. 2231, which is the bill currently supported by the administration.

State Response

Colorado was the first state to act, and passed House Bill No. 1493, which recognizes a good faith exception in state prosecutions [Colo. Rev. Stat. §16-3-308 (1981 Session)]. The bill was co-sponsored by 33 representatives and 8 senators; the governor signed the bill into law, and the act took effect on July 1, 1981.

Arizona was the second state to enact a good faith statute, House Bill 2106. What is now Ariz. Rev. Stat. 13-3925 was signed by the governor on April 20, 1982. In June, a nationally advertised conference and seminar on the good faith exception was held in suburban Phoenix. In addition to Arizona registrants, prosecutors from 14 other states attended the discussion sessions. AELE participated in this conference, and began work on a Model State Statute.

Model State Statute

In July 1982, Americans for Effective Law Enforcement proposed a Model State Statute, which is set forth in the box on page 3. Sections A and B closely follow the recent Arizona statute. The remaining sections were drafted to reflect the views of many of the attendants at the Phoenix conference; that such statutes give the courts as much direction and as little discretion as possible.

Good faith is specifically defined. Of particular interest is the section relating to warrantless searches (D-2). The officer must possess, in addition to his subjective belief that he has probable cause, "at least a reasonable suspicion" that the person possesses, or that the premises contains items of an evidentiary nature.

Reasonable suspicion is a standard of proof which has been determined in over five thousand published court opinions. It is the same quantum of proof necessary to justify a temporary detention of an individual under the "stop-and-frisk" doctrine recognized by the Supreme Court in 1968. It is an articulate standard in each state, based on thousands of situations. It is a standard of less than probable cause, but greater than intuition, hunch or a suspicion not premised on objective facts.

Another component of the Model State Statute is a training requirement. It will vary from state to state, and presumably each state training board will continually evaluate local training needs in search and seizure cases.

Constitutional Action Required in Some States

In a few states, like Florida and Louisiana, the Exclusionary Rule is a part of their state constitution. A constitutional amendment will be required in those jurisdictions; such an amendment was narrowly defeated in Florida in 1982, but will be re-introduced later.

In some jurisdictions, the state supreme court has adopted the principle of "independent state grounds" and refuses to admit certain evidence in state prosecutions, although that same evidence is admissible in the federal courts. California is such a jurisdiction, and citizen-supported attempts to end this judicial variance are now pending, through the initiative process.

Public Support for Truth in Evidence

The majority of Americans are law-abiding and are understandably frightened at the rising crime rate. They are dissatisfied with the criminal justice system and are frustrated that criminals are freed due to a "technical" violation of the Fourth Amendment. For example, California Assemblyman Robert Naylor recently polled his constituents in San Mateo County (the peninsula just south of San Francisco). Over 6,000 voters responded to a questionnaire; an overwhelming 80 percent of the respondents felt that evidence of guilt should not be excluded from a trial even if it

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was not gathered consistent with court-prescribed procedures.

Focus on the Real Issues

Civil libertarians warn of wholesale police abuse of any good faith exception to the Exclusionary Rule. Visions of police harrassment of innocent persons in their homes at 3:00 a.m., however dramatic, are not in issue. The "real" issue is the good faith mistake of a professionally trained officer, or an unnoticed minor error, or the retroactive effect of an overturned court precedent, or even a 3-to-2 decision that a particular law or procedure is "unconstitutional." Defense attorneys, who sometimes constitute the largest group of state legislators, have a vested interest in perpetuating the status quo.

The real goal of criminal justice should be the encouragement of professional law enforcement and to obtain convictions of the guilty. A search for technicalities does not further that end. The good faith exception, however, encourages police professionalism and still punishes intentional misconduct or an indifferent attitude to the rights of society. Good faith legislation is the modification of a rigid rule that in no way affects its principal purpose.

AELE's Position Urged

In his Senate testimony, AELE Executive Director Wayne Schmidt urged "the Congress as well as the courts, to adopt a 'Good Faith Exception' to the exclusionary rule." Minority Senator Dennis DeConcini, an author of one of the Good Faith bills, suggested that Congressional action would signal the states to adopt similar legislation. Perhaps it will be the other way around, which is why AELE has adopted a Model State Statute.

AELE members and supporters will be pleased to hear we have mailed this issue of **Impact** to 7363 state legislators and 530 Members of Congress. Let your representatives and senators know your views.

AELE MODEL STATE STATUTE *

Exclusionary Rule Limitations: Admissibility of evidence obtained as a result of an unlawful search or seizure.

A. If a party in a proceeding, whether civil or criminal, seeks to exclude evidence from the trier of fact because of the conduct of a peace officer in obtaining the evidence, the proponent of the evidence may urge that the peace officer's conduct was taken in a reasonable, good faith belief that the conduct was proper and that the evidence discovered should not be kept from the trier of fact if otherwise admissible.

B. No court shall suppress evidence which is otherwise admissible in a civil or criminal proceeding if the evidence was seized in good faith or as a result of a technical violation.

C. "Evidence" means contraband, instrumentalities or fruits of a crime, or any other evidence which tends to prove a fact in issue.

D. "Good faith" means whenever a peace officer obtains evidence:
   1. Pursuant to a search warrant obtained from a neutral and detached magistrate, which warrant is free from obvious defects other than non-deliberate errors in preparation and the officer reasonably believed the warrant to be valid; or
   2. Pursuant to a warrantless search, when:
      a. The officer reasonably believed he possessed probable cause to make the search, and
      b. The officer, possessed at least a reasonable suspicion that the person or premises searched, possessed or contained items of an evidentiary nature, and
      c. The officer reasonably believed there were circumstances excusing the procurement of a search warrant; or
   3. Pursuant to a search resulting from an arrest, when:
      a. The officer reasonably believed he possessed probable cause to make the arrest, and
      b. The officer reasonably believed there were circumstances excusing the procurement of an arrest warrant, or
      c. The officer procured or executed an invalid arrest warrant he reasonably believed to be valid; or
   4. Pursuant to a statute, local ordinance, judicial precedent or court rule which is later declared unconstitutional or otherwise invalidated; and
   5. The officer has completed a law enforcement academy or other approved prerequisite curriculum and any mandatory subsequent training or instruction in Constitutional law and criminal procedure, where required by the [State Peace Officers' Standards and Training Commission].

E. This section shall not adversely affect the rights of any plaintiff to seek special damages against a peace officer or a governmental entity, provided that the trier of fact in such civil action determines that the officer or entity conducted an unlawful search or seizure.

F. [Appropriate savings and severability clause].

*Adopted by **Americans for Effective Law Enforcement, Inc.** July 14, 1982.

AM RICANS FOR EFFECTIVE LAW ENFORCEMEI INC.

HISTORY

Americans for Effective Law Enforcement, Inc. (AELE) was founded in 1966 as a non-profit corporation for the purpose of establishing an "organized voice" for the law-abiding citizens regarding this country's crime problem, and to lend support to professional law enforcement. Its founders were Fred E. Inbau, now John Henry Wigmore Professor of Law Emeritus, Northwestern University; the late O.W. Wilson, then Superintendent of the Chicago Police Department; the late Harold A. Smith, a former President of the Chicago Bar Association; James R. Thompson, then on the Faculty of Northwestern School of Law and now Governor of Illinois; Alan S. Ganz and Daniel B. Hales, both Chicago attorneys; and Richard B. Ogilvie, then Chairman of the Cook County Board, and later Governor of Illinois.

AMICUS CURIAE PROGRAM

AELE became functional in early 1967 after having received a tax-exempt ruling from the IRS. The first project undertaken was the filing of a "friend of the court" (amicus curiae) brief in the United States Supreme Court in support of the constitutionality of the essential police practice of stopping a person reasonably suspected of having committed a crime or about to commit one, and then, for the police officer's protection, to frisk the person being stopped to insure the officer against being shot or otherwise physically harmed. That first case, *Terry v. Ohio*, decided in 1968, resu[illegible] judicial approval of "stop and frisk."

Since the *Terry v. Ohio* case, and up until late 1982, AELE has filed 79 "friend of the court" briefs in the United States Supreme Court and in other federal and state appellate courts. Of 74 completed cases, only 20 or 27.0 percent were decided unfavorably to the AELE supported law enforcement position.

PUBLIC INFORMATION

Augmenting our major projects and activities, our officers and staff have participated in TV and radio programs and have delivered lectures to educational and other groups in an effort toward letting the influential public know the practicalities confronting the police in their public protection efforts.

IMPACT is published periodically by Americans for Effective Law Enforcement, Inc., with staff headquarters in South San Francisco, California. IMPACT is an informal newsletter for those concerned with citizen participation in the criminal justice system and is a service provided to AELE members and law enforcement agencies.

AELE is a national, not-for-profit, legal research and educational organization of law-abiding citizens. AELE provides responsible and professional support and assistance to the law enforcement community through its "friend of the court" briefs, publications, workshops and research programs.

The officers are: Evelle J. Younger, Attorney-at-Law (Chairman); Daniel B. Hales, Attorney-at-Law (President); and Wayne W. Schmidt, Executive Director. Tel. (415) 877-0731.

Contributions to AELE are tax-deductible to individuals on federal income tax returns. AELE is not a "private" foundation, and financial data is available on request. AELE does not solicit or accept grants or direct financial assistance from the government or tax-supported entities.

AMERICANS FOR EFFECTIVE
LAW ENFORCEMENT, INC.
501 Grandview Dr., Suite 209
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(415) 877-0731

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Topeka, KS 66612

Meeting of February 11, 1983
Attachment #3

STATE OF KANSAS

Office of the Attorney General

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

VERN MILLER
Attorney General

August 6, 1974

Opinion No. 74-261

Col. William L. Albott
Superintendent
Kansas Highway Patrol
State Office Building
Topeka, Kansas 66612

Dear Colonel Albott:

You inquire whether members of the Kansas Highway Patrol may accept employment to perform law enforcement duties at the Kansas State Fair, at Hutchinson, Kansas, and receive compensation therefor from the State Fair Board.

K.S.A. 1973 Supp. 74-2113 states in pertinent part thus:

> "No member of the patrol shall hold any other commission or office, elective or appointive, except in the Kansas national guard or in the organized reserve of the United States army, air force or navy, or accept any other employment while he is a member of the patrol. No member of the patrol shall accept any compensation, reward or gift other than his regular salary and expenses as herein provided except with the written permission of the superintendent."

In an opinion dated April 2, 1968, Attorney General Robert Londerholm advised Colonel Woodson, then Superintendent of the Patrol, that a patrol member may sell merchandise during his off-duty hours, stating that "it is our opinion that pure self-employment of the kind described in your letter is not prohibited by this section." He continued thus:

> "We believe that the word 'employment' as used here was intended by the legislature to describe participation in an employer-employee

Atch. 3

> relationship. This legislative intent is indicated by the use of the word 'other' which implies a relationship similar to that between the patrol and one of its members."

The statute is expressly drawn to prohibit members of the Patrol from accepting any other employment. If a member of the Patrol accepts employment to perform law enforcement duties for the State Fair Board during the Fair on his days off or vacation time, and receives compensation therefor, he is doing that which the statute forbids, i.e., accepting employment other than and in addition to his employment with the Patrol.

Yours very truly,

VERN MILLER
Attorney General

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