

Defending Self Defense

An Interview with Attorney Mitch Vilos

by Gila Hayes

Utah trial attorney James "Mitch" Vilos, a Network Affiliated Attorney, is author of one of the best selling books on self-defense laws ever presented to a national audience. In *Self-Defense Laws of All 50 States*, Vilos analyzes the self-defense laws of each state, as well as including a number of chapters of more general information for armed citizens seeking knowledge that will keep them on the right side of the law. A trial attorney of over 30 years experience, and a shooting enthusiast who combines his love of firearms with a passion for defending gun rights and self-defense rights, it is hard to imagine an author better qualified to write on this subject.



Above: James "Mitch" Vilos

Vilos spoke with us recently about issues he raises in his book, as well as other topics of current concern. We switch now to the question and answer format to share with you an enjoyable conversation with this knowledgeable advocate.

eJournal: We've all been told that attorneys would starve if limited to defending innocent people. When you defend the client's decision to use a gun, is the gun owner usually entirely innocent or are there generally complicating factors that cast doubt on their innocence?

Vilos: I approach every case as if the gun owner is completely innocent. Sometimes there are complicating factors that lead to arrest and prosecution but you just have to believe your client and resolve all issues in his favor and go after it with a passion. Thus far, that has led to very good results.

I take every case as if we've got a perfect case and the government is stretching it. I not only do self-defense cases, but I defend gun owners and gun dealers in all kinds of legal matters. In many cases, if people are guilty, they are only guilty because the government says so. Many of the cases I defend involve "malum prohibitum" gun-control laws that are only crimes because the government says so. For example, it's not morally wrong to possess gun accessories without a tax stamp that could be assembled into a machine gun or silencer. But doing so is an ugly federal felony.

Many of these laws are not very well publicized and people accidentally and unknowingly fall into hidden legal traps related to the possession and ownership of guns. When I get a case like that, there are many possible defenses. I may approach it from the standpoint that the statute itself could be unconstitutional because it is so vague.

Other possible defenses include the concept of preemption, where a higher law trumps a law passed by a subordinate governmental body. A state statute can trump a conflicting county or city ordinance. In a state like Utah where self-defense rights are important, oftentimes counties and cities will pass ordinances that conflict with state law, and use these ordinances to prosecute citizens. I always look into that. Then there are state statutes that conflict with Federal law and of course there are Federal statutes that conflict with the Constitution. There are Federal regulations that conflict with Federal statutes.

You have to do that analysis. Some statutes involve elements that are pretty easy for a prosecutor to prove. If that is the case, you look deeper and ask if the statute itself is constitutional. I am always looking for a way to represent my client zealously within the bounds of the law, and protect the right to defend oneself and one's family.

eJournal: In cases where complicating factors, like being under the influence at the time of the incident or a

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concurrent violation of other laws cloud the claim of clear-cut self defense, how can a defense attorney separate the issues to protect the right to self defense?

Vilos: Can you give me an example?

eJournal: Let's say while an armed citizen is intoxicated three large thugs attack him and he defends himself using a gun. The question of whether he should have been carrying a gun while intoxicated is raised. How do you keep that from clouding the question of whether he had the right to defend himself?

Vilos: I think it is the attorney's responsibility to try to separate that and to try to show why some of those factors are irrelevant to the case. While you were giving that example, the first case that came to my mind was that case where someone had moved to New York from the South where it had been legal to possess a handgun without registering it. He kept the handgun in his New York apartment, and when his apartment was broken into, he used the handgun to defend himself and then he was arrested for having an illegal gun in his apartment.

There have been many cases, though not cases that I have had, where felons who are not allowed to have a firearm are attacked and somehow they get ahold of a firearm and defend themselves and family members. They are prosecuted for having firearms. In some of those cases the courts have decided that even though they don't have a right to possess a firearm with respect to the law relating to possession by a felon, those laws can be overcome on a theory similar to self defense called "necessity." We can break the law under some conditions if it is necessary.

If, for example, an earthen dam is down below our property, and if there is horrendous flooding and our whole property is going to be completely inundated, we have a legal defense under the theory of necessity to dig a ditch and let some of that water out of the dam so we can save our property.

The same legal principle could apply in some of these self-defense cases, because self defense, according to Supreme Court Justice Alito who wrote the *McDonald v. Chicago* opinion, is an inalienable or a fundamental right.

The right to defend your life is a right that should take priority over a gun control law that says that you can't have a weapon because of some previous charge. Of course, prosecutors don't always agree with that. It's hard for attorneys in general practice to be able to be



Above: Network President Marty Hayes (left) thumbs through Self-Defense Laws of All 50 States while the authors, Evan Vilos (center) and Mitch Vilos (right), point him to the good parts.

aware of those kinds of potential defenses because they are just so unusual. Unless you do a lot of research into weaponry and self defense you just don't come across those kinds of theories. Focusing my practice on those areas, gives me a strength.

eJournal: In addition, self defense is something for which you have your own personal passion, and I don't think fervor can be replaced by any amount of education.

Vilos: You go after it! You have the gravel in your guts, the spit in your eye, the fire in the belly and you go after anything it takes to defend a gun owner or a gun dealer. Some of the nit-picky violations that the Bureau of Alcohol, Tobacco and Firearms uses to take away gun dealer's licenses can be so ridiculous. As someone who appreciates the gun dealer as a conduit through which the citizen can exercise his right to keep and bear arms, it makes me want to protect these people and preserve their business. I guess I have a tendency to go after these cases with a passion.

In some of these cases, we've made some political moves, too. We had a case where a gun dealer was charged with 19 state felonies. We asked the Legislature to look at the law and even the Democrats felt that the penalties were excessive. The Legislature reduced the crimes from felonies to misdemeanors. So what had been 19 felonies suddenly became 19 misdemeanors!

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eJournal: Were you able to get that legislative decision applied retroactively?

Vilos: Yes! Yes! I guess the prosecutor didn't want to go after it, because that would have been another fight. We are lucky in Utah, for the most part, because a lot of the prosecutors understand the importance of the right to keep and bear arms.

When you give them a good reasons to resolve a case, a lot of times they will see the case the way you do and realize that even though the gun owner or dealer made a mistake, it wasn't as bad as originally thought. We work it out. We try to make it a win-win. The prosecutor gets some retribution and the gun owner doesn't lose his right to keep and bear arms or the dealer doesn't lose his business.

eJournal: Getting back to defending self defense: in your experience with gun-related cases do defendants usually go beyond what the law allows them to do in self defense, perhaps not understanding what is allowed to counter various levels of danger? When an armed self-defense case ends up in court, where have normally law-abiding people gone astray?

Vilos: In our *Utah Gun Laws* book, I changed my first chapter to include a lot of the mistakes that gun owners make. The most serious mistake relates to the law of self defense and I see a lot of those. People don't realize that if they are involved in any way in either provoking, initiating or escalating the conflict they could either totally lose the right to self defense, or they are involved in a situation that is so factually complicated that police almost always arrest and prosecutors almost always prosecute so that it's up to the jury to decide what really happened. I do a lot of those!

If you have a temper and you are carrying a gun, that's a bad combination! Sometimes it starts out as a verbal argument and it escalates. For example, the gun owner rationalizes that during road rage, the other person's car is a deadly weapon so he sticks his gun out the window, deadly weapon for deadly weapon. The next thing you know, he is arrested for brandishing or aggravated assault.

eJournal: What can you, the attorney, do in defending this person who admittedly did go over the line and made some bad decisions? How can you mitigate that?

Vilos: The facts are important. A very thorough investigation into the facts helps. I had a high-profile

client who was at a party where the neighbors complained that the partiers were using parking places that belonged to the neighbors. So this client sent one of his employees out to appease these complaining neighbors. The employee was a little computer geek and the neighbors were football player-types, skinheads, muscle-bound apes.

These goons started beating up on the computer geek. The employer went out and told them to get off of him or he was going to shoot them. He was charged with aggravated assault. When we investigated the case very thoroughly, we found out that the neighbors were really trespassers and that they initiated the conflict. They were so big and strong and there were so many of them, that they could have killed the little guy. Once we gathered all the facts together and presented it to the prosecutor, he dropped the case. It wasn't even a plea bargain. It was a total dismissal.

eJournal: So you got the train stopped before it ever left the station!

Vilos: Good lawyering sometimes happens long before any kind of a hearing, or before charges are brought. That is why I like your organization because you provide your members with funding whereby they can get an attorney immediately. A lot of times, the charges aren't even brought if the attorney investigates the case thoroughly before it hits the news media. Once it gets to the media, the prosecutor may feel like he has to prosecute, like in the Duke lacrosse case.

eJournal: That strategy has been one of our guiding principles in how the Network is set up to serve members. It is nice to hear that your experience parallels our priorities.

Vilos: It is so important to be able to hire and retain an attorney. People don't realize how expensive it can be. If the attorney is going to try a murder or attempted murder case the way we tried the case I wrote about in Chapter 12 where we practiced and rewrote the opening statement 11 times, you are looking at a potential \$250,000 fee by the time the jury decides the case. That does not include the appeal. Look at a case like Mr. Zimmerman's: that could involve a million dollars of the attorney's time.

eJournal: It is hard to know how someone like him can come up with that kind of money. It will be a very bad time for him.

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Vilos: That's why I encourage anyone who carries a weapon for self defense to be a participant in a plan like yours.

eJournal: Well, thank you. Now, turning to another topic from your book, in the *Thumbs Down* analyses, it seemed that a leading problem concerned Armed Defender/Unarmed Assailant or Assailants. Sadly, the examples you cited are not unusual. What is a poor armed citizen to do, give up and be victimized?

Vilos: Later on in the book, in Chapter 11, I talk about the unarmed assailant and perception and reaction time. We used actual examples where the gun owner never showed his gun, but because of his demeanor and where he had his hands, the predators realized that the gun owner was probably armed although they didn't see anything that would allow them to describe a weapon. They got the point and left. That is one way to do it. You only want to escalate force as force is used against you.

You don't want to just go to guns immediately because then you can be charged with attempted murder, aggravated assault, or murder if things go bad. You might be able to avoid the conflict by simply taking a posture like the two guys did in Chapter 11. The predator gets the point that there is probably a safer place to work.

eJournal: Now, suppose that the predator isn't that bright and our armed citizen does need to bring out a gun or even shoot to avoid being harmed. What steps does the defense attorney take to show why it was necessary to use a gun to defend against someone who does not have a knife or a gun?

Vilos: Then you have a situation like Zimmerman's. You hope he is going to have a wound or something like that to show that the person he was defending against was violent, although the law doesn't technically require you to be struck first. That's a tough situation. Fortunately, John Lott's statistics show that if predators believe you are armed, 90% of the time they are going to leave without you firing a shot.

There are other strategies! You can run, you can use a Taser®, you can use pepper spray. There are other options if you have those means with you, but not too many people carry anything other than a concealed handgun now days.

eJournal: You've just made a strong argument for carrying around what some have called layered

defenses, to give greater situational flexibility. I think you make a very good point.

Vilos: There are times that I carry a Taser®. I would much rather get myself out of a situation with a Taser if I can, because the final results are usually not going to be as drastic as if I used a handgun. When you read about civil rights lawsuits and Tasers, most of those are because police are using multiple Tasers and are using them in violation of their police training. I am not aware of any deaths in the use of the C2 (civilian model) Taser.



eJournal: This discussion of alternative means of getting out of conflict also reminds me of a few pages in your book in which you write about how willing you are to apologize to avoid a fight even when not at fault. Seems that is something more of us should practice, too! Still, I have to ask, is there a time for apologies and a time to quit apologizing? As the attorney defending someone who has acted in self defense, would you want them to publicly express sorrow or contrition or might that be misconstrued as trying to ease their guilt?

Vilos: Or worse, as an admission. The apology hopefully comes before the escalation! The distinction is this: usually when you end up with a case involving public outcry for your hide, it is because you've mistaken someone for a career criminal or predator. If the person you believe is threatening you has innocent intent and you apologize, often times that will work to de-escalate.

This is something that we see as we research the cases and as we handle these cases. I have had many aggravated assault cases where the alleged victim really was innocent, but the defendant perceived him as a threat. I think in many of those cases had the client/defendant tried to deescalate by apologizing, it would have turned out better; there would have been no crime.

If the person really is a predator, that's not going to work and at some point you may have to use deadly force. I tell you, even under those circumstances, if you use deadly force against someone who doesn't have a deadly weapon, there is a high probability that you are going to be arrested and prosecuted. That's what we point out in Chapter 7, the *Thumbs Down* factors.

eJournal: That is very instructive. Verbal de-escalation is not something practiced as much as draw and fire, for example, yet perhaps we should give it far greater

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emphasis, so long as it is kept in the right context. Back to apologies, though, during his bond hearing, Zimmerman attempted to express sympathy to Martin's parents, and the media was quick to call it an apology. I wonder if his words won't be used in suggesting that he feels guilty for what he did.

Vilos: Prosecutors will try to use any statement the client makes, whether it is before the prosecution, at the bail hearing or in an immunity or preliminary hearing. It is very dangerous to have your client testify in those types of hearings. Most of the time you don't yet know what all of the evidence is, and your client may say something that can be used against him. I've seen attorneys put the client on the stand and later wished they hadn't.

You always take a chance; it is a big chess game for the attorney from the time he is retained to the time the case is resolved. You only learn through your experience, through trial and error. Some of the decisions you have to make as a trial lawyer are very difficult.

eJournal: In light of your dual experience defending people against criminal charges, but also as a personal injury litigator, can you help us understand how the allegations and arguments differ as a case proceeds through criminal charges and later in civil court when the client is being sued for damages? Are there big differences in how facts are presented and how you counter the allegations?

Vilos: The difference between civil and criminal in Utah is pretty simple now. If the assailant is committing any crime at all, that person doesn't have a right to bring a lawsuit, period. Utah has one of the strongest civil immunity statutes in the nation, bar none.

I usually see the civil cases from the other end. As a personal injury lawyer, I've handled gun cases involving injuries. I'm usually the one bringing the lawsuit, because of excessive use of force or issues like that.

eJournal: Most people don't have much idea how litigation may play out, especially if we don't live in a state with so strong a civil immunity protection as yours.

Vilos: I don't think the evidence is that much different, except that in a criminal case, the prosecutor has to allege that what you did was intentional. In a civil case, if you want to keep the insurance in the case, your allegation had better not be that your defendant acted

intentionally. Once you allege that your defendant acted intentionally, you eliminate any possibility of recovering insurance.

Most insurance policies exclude any criminal intentional acts. When you take a case that involves a suit for damages, if the plaintiff's attorney understands what he is doing he is going to allege that the defendant acted negligently in using excessive force in defending himself and caused serious injuries to the attorney's client who is suing for damages.

eJournal: Of course, so getting into the insurance company's deep pockets is the entire reason for the lawsuit, isn't it?

Vilos: Most criminal defendants don't have a whole lot of money. You can't get blood out of a turnip goes the old saying. So as a plaintiff's attorney, you need to turn to whatever source might possibly reimburse your client for his or her injuries. That's where insurance coverage comes in. But most liability insurance policies have an exclusion that says they won't pay for the intentional acts of their insured. So you have to be careful not to claim the person who injured your client intended to. That's different than the duty of a prosecutor. If he doesn't prove intent, then he cannot get a conviction for a crime, because most serious crimes require criminal intent.

There is one strategy for a criminal defense related to that, though not many criminal defense attorneys know it. Let's say you have a serious injury. We had a case down here—not my case, but I watched it for three days—and in this case, coincidentally, we had a neighborhood watch shooting. A young father, who thought that his daughter was being stalked, went after what turned out to be the neighborhood watch person who had a gun as well. So both of them had guns, and the father won the gunfight and cut the spinal cord of the neighborhood watch volunteer.

The prosecutor brought a case for attempted murder, which is an intentional act. I thought it was a stretch, but the jury did convict him of attempted murder. If I had been defending this case, I would have asked the prosecutor to consider the needs of the victim, who had a very serious medical condition as a result of paralysis. I would try to prevail upon the prosecutor not to allege intent, to try to resolve this case short of a conviction for a serious crime like that. Maybe attempted negligent homicide or something like that, so that the insurance company would come in and cover this guy's injuries. If

the prosecutor is trying to do something for the victim, why not do something for the victim that will really make a difference?

It is another tool in the quiver of the criminal defense attorney to try to prevail on the prosecutor to back off so the victim can be helped by insurance proceeds.

eJournal: It is a good time to drive home valuable lessons, because at this time, armed citizens are transfixed watching the Zimmerman case in Florida play out. Many think, that could have been me. What kind of advice do you have for gun owners who are asking those kinds of questions. You've already given us a lot of good advice. Do you think of anything else?

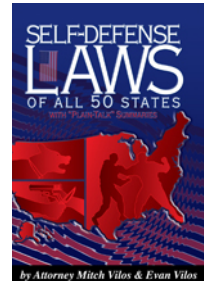
Vilos: Yes, as Clint Eastwood used to say as Inspector Callahan, "A man has to know his limitations." A man needs to know his legal limitations, as well, if he is going to use a weapon to defend himself. Try to deescalate, as we have mentioned, know the law, have the funding to get yourself a criminal defense lawyer, and make sure that you have plenty of homeowners' liability insurance. Many people don't realize that your homeowners' coverage covers you not only on your property but it covers you for negligent acts outside your property that don't involve a vehicle.

eJournal: Any further advice?

Vilos: Follow self-defense cases. We do. In *Self-Defense Laws of all 50 States*, we explain the cases in storybook fashion to illustrate hidden legal traps and other important rules of self defense. It is so hard sometimes to understand the law unless you have a story behind it. The best way for students of the law to remember the rules of law is to remember the stories that illustrate those rules. That is why we've tried to put as many examples as possible into our writings so that people can remember, in a simple way, the stories that illustrate the common hidden legal traps that can take away a defender's freedom and destroy him financially.

We appreciate your organization, and we encourage your members to become or continue to be students of the law.

eJournal: Thank you, Mitch, and I'd like to note that as one of our Affiliated Attorneys, you, too, are a vital part of the Network and our mission. I thank you for that, and also really appreciate the time you took to explain the issues we discussed in this interview



Attorney Mitch Vilos and his son Evan Vilos co-authored Self-Defense Laws of All 50 States, to which we referred several times in the foregoing interview. Network members can save 20% off the regular price of this valuable reference work, by entering the store code on their membership card.

http://www.armedcitizensnetwork.org/books?page=shop.product_details&flypage=flypage.pbv.tabs.tpl&product_id=72&category_id=1 to buy.

*[End of Article.
Please enjoy the next article.]*

State of Florida v. George Zimmerman

Chapter 1

by Marty Hayes, J.D.

Unless you have been living under a rock for the last few weeks, you have heard about the shooting death of Trayvon Martin by a block watch captain named George Zimmerman in Florida. You have likely also watched the media coverage of the incident, which most sane people will agree has been one sided and sensationalized. While it is tempting to rail on about this aspect of the case, I will do my best to limit my remarks to the facts as we know them and to logical legal analysis, free of sensationalism and hyperbole.

Setting the Stage

George Zimmerman lived in a gated community of town homes in Sanford, Florida. At some time in the past, this community started a chapter of Neighborhood Watch, sometimes known as Block Watch. Apparently, Zimmerman had been elected, appointed or volunteered as the head of this block watch effort. Neighborhood Watch is the name of a nationwide effort to coordinate local crime prevention activities and is typically organized at the behest of local law enforcement agencies. Zimmerman was a part of the community effort to help keep crime rates down, primarily by reporting suspicious activity to the police. (For more details, see

http://usnews.msnbc.msn.com/_news/2012/04/25/11396690-george-zimmerman-prelude-to-the-shooting-of-trayvon-martin?fb_ref=.T5jdrRF4Y2U.like&fb_source=home_one_line)

On the night of February 26, 2012, Zimmerman was in his car driving through the neighborhood when he called 911. Here is the transcript of that 911 call:

Zimmerman: Hey, we've had some break-ins in my neighborhood, and there's a real suspicious guy, uh, near Retreat View Circle. The best address I can give you is 111 Retreat View Circle. This guy looks like he's up to no good, or he's on drugs or something. It's raining and he's just walking around, looking about.

Dispatcher: OK, and this guy, is he white, black or Hispanic?

Zimmerman: He looks black.

Dispatcher: Did you see what he was wearing?

Zimmerman: Yeah. A dark hoodie, like a grey hoodie,

and either jeans or sweatpants and white tennis shoes. He's here now. He was just staring...

Dispatcher: OK, he's just walking around the area...

Zimmerman: Looking at all the houses.

Dispatcher: OK.

Zimmerman: Now, he's just staring at me.

Dispatcher: Ok. You said it's 1111 Retreat View? Or 111?

Zimmerman: That's the clubhouse...

Dispatcher: That's the clubhouse, do you know what the—he's near the clubhouse right now?

Zimmerman: Yeah, now he's coming towards me.

Dispatcher: OK.

Zimmerman: He's got his hand in his waistband. And he's a black male.

Dispatcher: How old would you say he looks?

Zimmerman: He's got button on his shirt, late teens.

Dispatcher: Late teens OK.

Zimmerman: Something's wrong with him. Yup, he's coming to check me out. He's got something in his hands; I don't know what his deal is.

Dispatcher: Just let me know if he does anything, OK?

Zimmerman: How long until you get an officer over here?

Dispatcher: Yeah, we've got someone on the way; just let me know if this guy does anything else.

Zimmerman: OK. These assholes, they always get away. When you come to the clubhouse you come straight in and make a left. Actually, you would go past the clubhouse.

Dispatcher: So, it's on the left-hand side from the clubhouse.

Zimmerman: No, you go in straight through the entrance and then you make a left...uh, you go straight in, don't turn, and make a left. Shit, he is running...

Dispatcher: He's running? Which way is he running?

Zimmerman: The back entrance...F__king (unintelligible)

Dispatcher: Are you following him?

Zimmerman: Yeah.

Dispatcher: OK, we don't need you to do that.

Zimmerman: OK.

Dispatcher: Alright, sir, what is your name?

Zimmerman: George...He ran.

Dispatcher: Alright, George, what is your last name?

Zimmerman: Zimmerman

Dispatcher: And, George, what's the phone number you're calling from?

Zimmerman: Redacted.

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Dispatcher: Alright, George, we do have them on the way, do you want to meet with the officer when they get out there?

Zimmerman: Alright, where you going to meet with them at?

Zimmerman: If they come in through the gate, tell them to go straight past the club house, and uh, straight past the clubhouse and make a left, and then they go past the mailboxes, that's my truck. (unintelligible)

Dispatcher: What address are you parked in front of?

Zimmerman: I don't know, it's a cut through so I don't know the address.

Dispatcher: OK, do you live in the area?

Zimmerman: Yeah, I (unintelligible)

Dispatcher: What's your apartment number?

Zimmerman: It's a home it's 1950, oh crap, I don't want to give it all out. I don't know where this kid is.

Dispatcher: Okay do you want to just meet with them right now near the mailboxes then?

Zimmerman: Yeah, that's fine.

Dispatcher: Alright, George, I'll let them know to meet you around there, OK?

Zimmerman: Actually, could you have them call me and I'll tell them where I'm at?

Dispatcher: Yeah, I got it (redacted)

Zimmerman: Yeah, you got it.

Dispatcher: Okay, no problem. I'll let them know to call you when you're in the area.

Zimmerman: Thanks.

Dispatcher: You're welcome.

That is the actual transcript of Zimmerman's 911 call. In addition, the actual 911 recording is on the Internet, at <http://www.youtube.com/watch?v=KgR7gCxXQYg> (amongst others). In preparing this article, I spent considerable time listening to the call and one thing was apparent to me: Zimmerman did not ignore the dispatcher when the dispatcher said, "OK, we don't need you to do that" after asking Zimmerman if he was following Martin. In listening to the audiotape, it was apparent when Zimmerman started running after Martin, right after saying, "Shit, he's running." For a few seconds he appears to be running after Martin. When the dispatcher explains to Zimmerman that he doesn't have to follow him, the tape shows that Zimmerman quits running, and his voice goes back to normal.

Research indicates that the shooting took place behind a town home, in the back yard next to a common sidewalk. It did not occur near the street, where Zimmerman's vehicle would have been parked. From what I can gather, while Zimmerman was waiting for the police, he did not go back to his car, but instead was

either following Martin or attempting to locate him. This in itself is not a crime and I do not believe merely attempting to locate a suspicious person in the neighborhood where you are a block watch captain rises to the level of being considered the initial aggressor in an altercation.

Reading news accounts of the charging decision by the prosecutor leads me to believe that the State is making an issue of a comment Zimmerman made under his breath while being recorded on the 911 call. There are indications that the State is saying that Zimmerman said "f__king coons" after telling the dispatcher that Martin was heading towards the back entrance to the community. If he did, it makes Zimmerman look something other than absolutely clean in this incident. With that in mind, I spent considerable time listening to that audiotape, and the best I can make out is that he said, "F__k it's cold," not "f__king coons." Remember, this is Florida, and the night in question was rainy and cold, and Zimmerman had just gotten out of his vehicle. There is also commentary that Zimmerman said, "F__king punks," which if true, doesn't really hurt his case, either.

The Altercation

After Zimmerman stopped talking with the dispatcher and before the police arrived, Zimmerman and Martin came into physical contact. According to Zimmerman's father, who gave an account of the incident to news media based on what his son told him, Zimmerman was approached by Martin, who hit Zimmerman in the face, knocking him to the ground and then getting on top of Zimmerman and beating him. Additionally, at some point, Zimmerman's head was smashed against a concrete sidewalk. Let's take a critical look at this account, and compare it to what we know now and to witness statements of which we are now aware.

First, from my research, it appears that the altercation occurred behind a set of town homes, near a community sidewalk. This sidewalk is common to the whole set of town homes and leads to a clubhouse with a swimming pool. This lends credence to the supposition that Martin was pounding Zimmerman's head against the sidewalk. Additionally, I saw a TV report in which a neighbor showed where Zimmerman was lying with Martin on top of him. That report showed that Zimmerman was on his back on the grass with his head partially on the sidewalk. That had bothered me since learning that Zimmerman suffered cuts to the back of his head. Why, if he was lying on the sidewalk, didn't he have the cuts lower on the back of his head, instead of only near the crown?

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The picture of the bloody head supposedly taken minutes after the incident by a neighbor with a cell phone camera, shows the cuts in a lateral (horizontal) aspect on the back of Zimmerman's head. This would match up perfectly if Zimmerman's head contacted the edge of the concrete sidewalk as Zimmerman lay in the grass. Witness reports say that Zimmerman's back was wet and had grass on it. You can view the head wound photos at many locations on the Internet, including <http://abcnews.go.com/GMA/video/zimmerman-injuries-exclusive-photo-night-trayvon-martin-death-16178849>.

Missing Evidence

Taking all the above into account, it appears to me that the account given by Zimmerman's father is verified by evidence that has been made public. We do not yet know exactly what evidence will confirm or refute Zimmerman's account.

The autopsy report, which if done competently, should indicate the bullet wound track. It should also indicate whether this was a contact wound. If it was a contact wound and the track of the wound is consistent with Martin being on top of Zimmerman when the shot fired, it will go a long way towards proving Zimmerman was justified in shooting Martin. If it wasn't a contact wound, we must ask if there was powder stippling on Martin's clothing.

If there is, it should not be difficult to determine the distance of the gun from Martin when he was shot. Is there gunshot residue on Martin's hand or hands? One account suggests there was a struggle for the gun. Gunshot residue would tend to confirm this, although the science behind gunshot residue is pretty iffy. Still, it would provide another piece of the puzzle about what happened that night. Did the Kel-Tec 9mm pistol jam after the first shot? If so, it would tend to confirm a struggle for the gun. Finally, returning to the bullet wound, assuming Zimmerman is right handed, the gunshot wound should be on Martin's left side, if Martin was on top of Zimmerman. This is all information that we have yet to see, and when released these details will help confirm or refute Zimmerman's story.

The State's Case

On April 11th, 2012 the State of Florida filed the following affidavit of probable cause, which was relied upon to issue the arrest warrant for George Zimmerman:

OFFICE OF THE STATE ATTORNEY
FOURTH JUDICIAL CIRCUIT of FLORIDA
ANGELA B. COREY

STATE ATTORNEY
STATE OF FLORIDA VS. GEORGE ZIMMERMAN
EIGHTEENTH JUDICIAL CIRCUIT, SEMINOLE COUNTY
FLORIDA
AFFIDAVIT OF PROBABLE CAUSE – SECOND DEGREE
MURDER

Before me, personally appeared T.C. O'Steen and K.D. Gilbreath, who after being duly sworn; deposes and says:

Your affiants, Investigators T.C. O'Steen, and Dale Gilbreath are members of the State Attorney Office – Fourth Judicial Circuit appointed in the case by State Attorney Angela B. Corey, who was assigned in the case under Executive Order of the Governor 12-72.

Investigator O'Steen was previously employed by the Jacksonville Sheriff's Office, and has 35 years of law enforcement experience, including 20 years handling homicide investigations. Investigator Gilbreath was previously employed by the Jacksonville Sheriff's Office, and has 36 years of law enforcement experience, including 24 years handling homicide investigations.

Your affiants, along with other law enforcement officials have taken sworn statements from witnesses, spoken with law enforcement officers who have provided sworn testimony in reports, reviewed other reports, recorded statements, phone records, recorded calls to police, photographs, videos and other documents in detailing the following:

On Sunday, 2/26/12, Trayvon Martin was temporarily living at the Retreat at Twin Lakes, a gated community in Sanford, Seminole County, Florida. That evening Martin walked to a nearby 7-11 store where he purchased a can of iced tea and a bag of Skittles, Martin then walked back to enter the gated community and was on his way back to the townhouse where he was living when he was profiled by George Zimmerman. Martin was unarmed and was not committing a crime.

Zimmerman who also lived in the gated community, and was driving his vehicle observed Martin and assumed Martin was a criminal. Zimmerman felt Martin did not belong in the gated community and called the police. Zimmerman spoke to the dispatcher and asked for an officer to respond because Zimmerman perceived that Martin was acting suspicious. The police dispatcher informed Zimmerman that an officer was on the way and to wait for the officer.

During the recorded call Zimmerman made reference to people he felt had committed and gotten away with break-ins in his neighborhood. Later while talking about Martin, Zimmerman stated "these assholes, they

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always get away” and also said “these f__king punks.”

During this time, Martin was on the phone with a friend and described to her what was happening. The witness advised that Martin was scared because he was being followed through the complex by an unknown male and didn't know why. Martin attempted to run home but was followed by Zimmerman who didn't want the person he falsely assumed was going to commit a crime to get away before the police arrived. Zimmerman got out of his vehicle and followed Martin. When the police dispatcher realized Zimmerman was pursuing Martin, he instructed Zimmerman not to do that and that the responding officer would meet him.

Zimmerman disregarded the police dispatcher and continued to follow Martin who was trying to return to his home.

Zimmerman confronted Martin and a struggle ensued. Witnesses heard people arguing and what sounded like a struggle. During this time period witnesses heard numerous calls for help and some of these were recorded in 911 calls to police. Trayvon Martin's mother has reviewed the 911 calls and identified the voice crying for help as Trayvon Martin's voice.

Zimmerman shot Martin in the chest. When police arrived Zimmerman admitted shooting Martin. Officers recovered a gun from a holster inside Zimmerman's waistband. A fired casing that was recovered at the scene was determined to have been fired from the firearm.

Assistant Medical Examiner Dr. Bao performed an autopsy and determined that Martin died from the gunshot wound.

The facts mentioned in this affidavit are not a complete recitation of all the pertinent facts and evidence in the case but only are presented for a determination of Probable Cause for Second Degree Murder.

By: Investigator T.C. O'Steen, Affiant
By: Investigator Dale Gilbreath, Affiant

Sworn to and subscribed before me
This 11th day of April, 2012
Jennifer Weigel
Notary Public, State of Florida at Large

Legal analysts opine that this affidavit of probable cause is very weak. I cannot concur at this time because I don't know what Zimmerman told detectives when questioned after the incident, as those statements could have been used to bolster the 911 call. It is clear is that this affidavit

only told the judge one side of the story: that Martin was a victim of Zimmerman. The affidavit makes no mention what so ever of Zimmerman's claims that he was being beaten, with his head at one point contacting the concrete. Nor does it indicate that Martin's father stated that it was not Martin's voice heard on the 911 call yelling for help, in contradiction to Martin's mother's statement in the affidavit, claiming it was Martin's voice heard yelling for help.

The affidavit falsely states that the dispatcher told Zimmerman not to follow Martin. Clearly, the dispatcher did not order or tell Zimmerman not to follow Martin, but simply said that it was not needed.

Zimmerman's Legal Challenge

Florida law, as it pertains to the Zimmerman case, states that it is lawful to use deadly force to prevent imminent death or grave bodily harm to oneself. This is the proof that Zimmerman must bring to the jury: that he reasonably believed his life was in imminent danger. Zimmerman claims that Martin was on top of him, hitting him and beating his head against the concrete sidewalk. If true, does this equate to a reasonable belief that death or grave bodily harm was imminent?

I would hazard a guess that having one's head struck against a sidewalk with sufficient force to cause lacerations would also create intense pain, causing confusion and fear of additional injury.

The outcome of this case will hinge on Zimmerman's ability to communicate to the jury why he reasonably believed his life was endangered. Before a jury trial occurs, however, Zimmerman gets a chance to have the charges against him dismissed. Pursuant to another Florida statute, he is entitled to a pre-trial hearing at which he can establish his innocence by reason of self defense. The burden of proof will require a “preponderance of the evidence,” meaning over 50%, decided by a trial judge. At the same time, the State will be forced to show their evidence establishing guilt of illegal use of force, if they can prove that. If Zimmerman is able to prove to the trial judge, to a preponderance of the evidence, that his use of deadly force in self defense was reasonable, he will be immune from prosecution and the case against him dismissed. Currently, the emphasis from the Zimmerman legal defense team is on this hearing and getting the charges against him dismissed.

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Conclusion

It was my intent to dispassionately discuss the important details of the court case *State of Florida v. George Zimmerman*, as it stands at the time of publication. There are many learning points in this case that the armed citizen should consider, and so I expect to

continue to report on the case in upcoming editions of the *eJournal* as *State of Florida v. George Zimmerman* progresses through the Florida courts.

*[End of article.
Please enjoy the next article.]*

Affiliated Attorney Question of the Month

Thanks to the generous help of our Network Affiliated Attorneys, in this column we familiarize our members with our affiliated attorneys while demystifying aspects of the legal system for our readers. Here is the question we asked our Affiliated Attorneys this month—

“Within ethical and moral standards, what can an attorney do to best defend a citizen who has broken a law that restricts his or her civil rights? Do you know of examples in which trial results were favorable to the defendant, despite his or her violation? How does this example apply to armed citizens in states with extremely restrictive gun laws?”

Sean P. Healy

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The attorney must always remember that his first duty is to his client. The attorney may want to go to war to overturn the law, but the client may not want to be the test case. The attorney must always advise the client thoroughly and candidly. This may include realistically evaluating the chances of overturning the unjust law, and accurately estimating the costs of the appellate process. The case is the client's, not the lawyer's.

Donald E. Little

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donalddittle1@msn.com

If the premise of your question is “What can an attorney do to best defend a citizen who has broken a law that restricts his or her civil rights,” then the answer should be to defend the client with a statement to the jury that your client's constitutional rights were violated because the law is unconstitutional. Unless the U.S. Supreme Court has heard an issue on such a law and affirmed the law or refused certiorari it is an arguable defense. The Supreme Court is there to ensure that the laws of the majority do not infringe on the rights of the minority.

J. Jeffries Goodwin, Esq.

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As you already know, no judge will allow an attorney to mention jury nullification. However, it is easy to get around by arguing that the purpose of the jury, and the entire justice system, is to do justice, to do what is fair and just. The legislature writes the laws but they can not tell you that you must convict my client on the facts as you have heard them and as you understand them.

Editor's note: This month's attorney question is a delicate one, and understandably, not many of our affiliates were inclined to put their answer in writing. While developing the question, however, I enjoyed a long phone conversation with one of the Network's affiliated attorneys, and because the ideas gleaned during that informative talk shed a lot of light on this Question of the Month, I would like to distill some of that conversation for readers who are interested in this topic.

I had earlier let this affiliate know that I wanted the next Attorney Question of the Month column to deal with the concept of jury nullification. Jury nullification provides an option for juries to avoid a ruling that would result in punishment for a defendant who has violated the law. Sound obscure? Perhaps, though we are currently seeing the subject discussed in the news because of the dismissal of charges of jury tampering brought against Julian Heicklen when he protested outside a Federal courthouse advocating jury nullification.

Better applicable to our area of interest, though less current, was the case of disabled veteran Melroy Cort, arrested for three gun-related charges while passing through Washington, D.C. on his way to Walter Reed hospital for treatment.

Though clearly in violation of the District's strict gun laws, Cort was only convicted of possession of illegal ammunition, a misdemeanor, and the jury acquitted him on the felony charge of carrying a pistol without a license and having an unregistered firearm. The Washington Post <http://www.washingtonpost.com/wp-dyn/content/article/2009/01/13/AR2009011302840.html> reported that the public defender urged Cort to plead

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guilty, but Cort refused and presented his own arguments, because a felony conviction would stop the military benefits the double amputee who uses prosthetic legs so badly needs.

The problem in posing a question about jury nullification to practicing attorneys is that any public statement outlining how to accomplish jury nullification could cause considerable professional difficulty, the affiliate told me. I believe the words he used were, "No one in their right mind would answer a question specifically about how jury nullification occurs." But he went on to talk with me about defending clients in "situations where the law is not fair or the law is years behind the times."

"Sometimes an offer of proof to the trial court will sow the seeds of admissibility in a higher court of appeals, Supreme Court of your state, or Federal Court, which may later agree with your position," he explained.

For example, in times past, it was difficult to defend battered women who incapacitated their persecutors outside of an immediate assault, because evidence of the Battered Women's Syndrome was inadmissible. As one of the first to challenge that legal obstacle, our affiliate told me that the key is finding ways to "push the legal envelope." If he introduced evidence that the prosecution said was inadmissible, he recollected, the judge would tell him to "make an offer of proof," and he would do so. The judge would say, "Really? OK, you can make that argument, and introduce this evidence."

Then the prosecution would complain, "But you can't argue battered woman's syndrome!" and the judge would retort, "Now he can!" In this way, the attorney had ethically and within the bounds of the law brought to the judge's attention facts that helped explain why the battered woman had shot her abuser when he was not at that moment harming her.

Creative advocacy is needed when the laws currently in force are unjust, our affiliated attorney noted. "Let's say you want to advance a Castle Doctrine where it is not law," he continued. "You would cite case law from other states during a Pretrial Motion hearing seeking the Court's ruling allowing you to present a Castle Doctrine defense," he suggested. "That is how some of the first Castle Doctrine rulings came about," he told me. "You make unconventional use of new information, statistics, science, research and existing laws to challenge precedent."

The same kind of pro-active advocacy has been effective in civil rights cases, including *Batson v. Kentucky*, 476 U.S. 79 (1986) and in *Brown v. Topeka Board of Education*, he asserted, and has likewise been effective in fighting discrimination based on age or gender, as well. "A good attorney works hard to get the right information into the record so the judge and jury can make the right decisions," he stressed.

"When social rules change, the law allows itself to be changed," he continued, noting that often the law lags considerably behind public viewpoints. This is true of laws about firearms in America today, he suggested. "In light of massacres and attacks, people are more concerned about the individual right to defend oneself and so the public view evolves in favor of the right to defend oneself. You can change the law by good lawyering," he concluded.

We deeply appreciate the contributions our affiliated attorneys make to the Network, including their assistance with this column. Contact information for our Network affiliated attorneys is linked at <http://armedcitizensnetwork.org/attorney-list>. Member log in required.



President's Message

by Marty Hayes, J.D.

I am going to use this month's President's Message to vent. Here is the story. Yesterday, a new member called to complain that he had not yet received anything from the Network, and while that occurs occasionally, it is likely that his membership package was due to arrive in a day or two. We offered to mail a new membership card and set of six educational DVDs.

Then, without warning, our caller went into a tirade about how we are vastly overcharging for insurance premiums, stating that there is no way it should cost \$85 a year for \$10,000 of coverage! Knowing that he obviously had a misconception of who we are and what we offer, I let him go on until he exhausted himself. I then patiently explained the whole scope and nature of the Armed Citizens' Legal Defense Network, Inc. and what we do. He then started repeating his same argument, unable or unwilling to understand! I interrupted him on his second volley, and told him that it was my opinion that the Network just wasn't a good fit for him, and that we should refund his membership money and let him go buy an insurance policy somewhere. We wished him good luck and sent him a refund check that afternoon.

Now, here is why I gave his money back and parted ways with this caller. Since the time that I was old enough to make my own decisions, I have chosen to associate with those who I wanted to, and really haven't sacrificed my own mental well being to belong to a group, a clique, a club or even stay employed at a place where I didn't feel like it was a mutually beneficial association. So, after listening to the gentleman for a few minutes, it was clear this was a guy who didn't want to learn what the Network is or to admit that he had failed to do his due diligence before joining.

I think we do a very good job at being open and transparent in all we do here. Why this is so important to me, is that not only is it imperative that our members understand what they are getting for their \$85 per year, but it is even more important that our members take the time to fully understand the WHOLE concept of armed

defense and the legal issues surrounding being a responsible armed citizen.

Our members need to read about self-defense issues, and we strongly recommend they meet with an attorney in their area and get a full understanding of the laws of their particular location. Members need to watch and study the educational DVDs we send, taking notes during the lectures to document that knowledge. Members need to, for the rest of their gun-toting lives, spend time each month, each quarter and each year updating their knowledge about firearms issues, new laws that may be passed in their location, and practicing and training in self-defense skills.

I felt that the new member who called would not do any of that, so I didn't want him as a part of the Network. I saw him as a gun-toting bubba who would only get in trouble in the future, because he was too lazy to take his responsibility as an armed citizen seriously, just as he was too lazy to read and understand what the Network was all about. Okay, I feel better now.

Understanding the George Zimmerman case

Starting with this edition of the *eJournal*, I plan to give a legal analysis of the case now known as *State of Florida v. George Zimmerman*. Of course, there is a plethora of information about the case spewed forth by the mouthpieces on CNN, MSNBC and FOX, but for the most part, they are either purposely or incompetently getting it wrong. The first article will be pretty long this month, because there is a lot to cover.

Each month as long as this case is still active, I will give an update analysis. I don't intend to get wrapped up in the political or racial overtones of the incident; that analysis is best left to others. I simply want to dissect the facts as we know them and try to explain them to our members in a logical, dispassionate way. We will see how it goes.

Comments on the NRA Meeting

As Vincent and Brady will both be discussing the NRA meeting, I will not repeat their thoughts, though I do want to thank all our members who came to the booth and introduced themselves. It is this acceptance that keeps us working daily to grow the Network, not just in numbers, but also in overall acceptance in the industry.

Here's an example: just this week I got a call from a Denver attorney who wanted to discuss a self-defense

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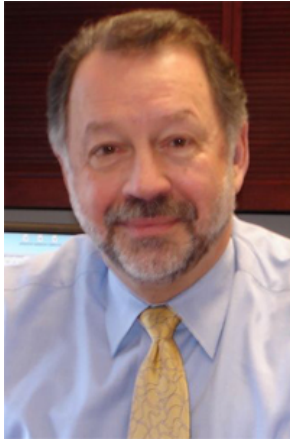
case with us, and perhaps hire one or more of our experts to help work on the case.

He learned about us during Internet research on self-defense legal issues. Seeing our leadership in this area of the law, he called us. I'm not sure if any of us will be getting involved in the case, and if we do, it will be done privately, not as part of the Network activities. Still, it illustrates how the Network is becoming a loud voice in the self-defense arena.



Above: Marty gives an interview to a podcaster at the NRA Annual Meeting in St. Louis in April.

Vice President's Message



Report on the NRA Meeting

by J. Vincent Shuck

Individuals were standing in line at our booth, often 20 deep, waiting to sign up to become new Network members! OK, the 20 deep line up comment is an exaggeration, but we were kept very busy during

the 2012 NRA meeting in St. Louis answering questions about the Network and signing up new members. In fact, it was a record session for us and we signed up more new members, affiliated instructors, gun shops and attorneys at this meeting than during any of our previous NRA meetings. We sincerely thank our new members for joining, most of whom will be seeing an issue of the *eJournal* for the first time as members as they peruse this May issue. Welcome aboard!

Below: Massad, Marty and Vincent catch their breath after setting up the Network's booth the day before the Annual Meeting started.



Brady, Marty and I were joined by over 73,000 friends at the meeting, an all-time record for NRA meeting attendance. On Saturday, typically the busiest day of the three-day meeting, the aisles were so packed with individual NRA members and those who brought family and friends that it was difficult to move without bumping into another Second Amendment supporter. And, a number of our Network members visited the booth to say hello and introduce themselves – thanks to those who stopped by and added to our successful meeting experience.

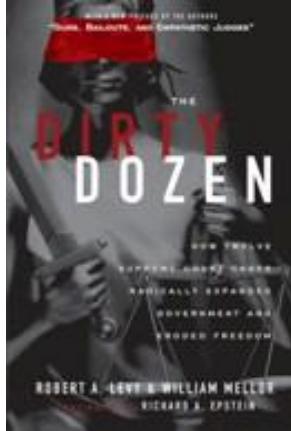
This year we were joined in the booth on Saturday by Massad Ayoob for a meet and greet session. Mr. Ayoob, a Network Advisory Board member, nationally-recognized authority on use of deadly force, expert court witness, and trainer for police and private citizens, signed photographs, posed for pictures, greeted many of his former students and recommended Network membership to those who had not yet joined.

Many of the visitors to the booth had heard about the Network and just wanted to meet us before joining. We made that happen and gladly spent time with everyone. After listening to our summary of the Network, individuals understood the Network's mission and realized that the Network's educational activities and financial support are unique. Not to be left out, several spouses joined as a family member.

Not allowing any grass to grow under our feet, while in St. Louis we made plans for the NRA's 2013 meeting and selected our booth location in the exhibit hall. Seriously, the NRA annual meeting is an outstanding example of how we express our Second Amendment freedoms and support the NRA. It's also the place to see, touch and feel just about everything related to shooting and hunting. You should consider attending. Place May 3-5, 2013 on your calendar and join us in Houston next year.

*[End of article.
Please enjoy the next article.]*

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Book Review

The Dirty Dozen

How Twelve Supreme Court Cases Radically Expanded Government and Eroded Freedom

By Robert A. Levy and William Mellor
Foreword by Richard A. Epstein

CATO Institute
National Book Network
1000 Massachusetts

Avenue NW, Washington DC 20001

<http://www.cato.org/store/books/dirty-dozen-how-twelve-supreme-court-cases-radically-expanded-government-eroded-freedom-paperb>

ISBN 978-1-935308-27-0

\$9.95

Reviewed by Gila Hayes

The preface title, *Guns, Bailouts, and Empathetic Judges*, drew me into *The Dirty Dozen*, a 250+ page book I stumbled on searching for another title. With a preface like that, how could I resist?

Written first in 2008, and republished a year later in paperback format, *The Dirty Dozen* starts optimistically, when the preface references the landmark case for gun owners, *District of Columbia v. Heller*. That's quickly tempered by recognition of the Obama administration's "radical redistributionist and regulatory agenda," as well as current and previous administration's bank bailouts, violating the first clause of Article I of the Constitution. The bank bailouts are only one example. The war on terror had its share of unconstitutionality, too.

And where is the Supreme Court in all of this? Isn't guarding against unconstitutional laws and regulations its job? In *The Dirty Dozen*, authors Levy and Mellor set out to bring to light cases that steered America away from the values of its Constitution. "Whether it is political speech, economic liberties, property rights, welfare, racial preferences, gun owners' rights, or imprisonment without charge, the U.S. Supreme Court has behaved in a manner that would have stunned, mystified, and outraged our Founding Fathers," write the authors. In critiquing cases with long-lasting effects on America's freedoms, they start at 1933 and move forward. "A Court consisting of unelected justices with lifetime appointments has rewritten the Constitution without

input from, or accountability to, the people of the United States," they charge.

It wasn't easy choosing only a dozen cases to discuss, the authors recall, noting that a survey produced a field of 200 notorious Court decisions, from which they selected those most deleterious to freedom. These concern redistribution of wealth, regulating commerce, overriding private business contracts, administrative law-making, restricting political speech, gun rights, impinging on civil liberties in the name of national security, asset forfeiture without due process, invoking eminent domain for private enterprise, devaluing property by regulation, and finally, racial preferences balanced against equal protection.

Sound like a good line up? Not only does the book describe key decisions (many not as well-known as *Roe v. Wade*, about which they comment in a short "post script" chapter), it identifies the constitutional principle affected, outlines the facts of the case, opines on where the Court went astray and explains the long-term effects of the decision.

The Dirty Dozen's repeated thesis is that all three branches of government have often violated the Constitution's directive that the Federal government may exercise only "limited and enumerated" powers. They invoke Madison's writings in nearly every chapter, reminding me of a book I'd read, *Plain, Honest Men: The Making of the American Constitution* which drew not only on Madison's writings, but on correspondence between many of the participants in the task of transforming loosely affiliated states operating under the Articles of Confederation into a nation guided by executive, legislative and judicial branches. Without the story of *Plain, Honest Men*, I would not have found Levy and Mellor's warnings of how far we've wandered from the Founding Fathers' intent so powerful.

The Dirty Dozen's first chapter studies expansions of Federal spending, focusing on a 1930s challenge to the Social Security Act. Next comes the Commerce Clause, so badly abused by the Court that the reader wonders if it can ever return to its original purpose. In the third chapter, detailing verdicts violating the Contracts Clause of the Constitution, we see how decisions made in the 1930s set the direction for current legislation that retroactively changes contracts between private individuals, harming credit availability and other business dealings.

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The analysis shows how Shays' Rebellion influenced the authors of the Constitution. Today, the Court's repudiation of the Constitution's Contracts Clause is another example of government arbitrarily taking assets from one set of citizens (corporate shareholders) and giving them to another.

The fourth chapter covers rules emanating from bureaucratic agencies in violation of the Constitutional rule that only Congress can pass laws. Too often the hundreds of agencies authorized by Congress enact and enforce regulations to fulfill poorly defined legislation like the Clean Air Act, the Food, Drug and Cosmetic Act or others.

Loss of Freedoms

Part II of *The Dirty Dozen* leads with cases impinging free speech through Court-approved political contribution/spending limits. A pre-Heller study of gun control follows, and while it's not current, the history is useful. Levy and Mellor posit that citizens living in crime-ridden gun-free areas plead for protection, but instead the government responds with 24-hour surveillance, searches of public housing, curfews and other restrictions.

Appropriately the next chapter details conflicts between national security and civil liberties. Few today feel anything but disgust at the treatment of Japanese Americans by the Roosevelt administration, but aren't terribly troubled by prisoners held without charges after 9-11. Blame expanded Presidential powers for wartime extremes, the authors suggest, explaining that George W. Bush and FDR both acted outside of the power the Constitution gives the President. If such actions are necessary to national security, we should amend the Constitution, not rationalize that while it may have been wrong, it seemed necessary at the time. Other chapters discuss confiscation of property used in commission of a crime, eminent domain and condemnation of privately held property.

As if confiscating or condemning property wasn't bad enough, next comes a discussion of property rights taken by regulation, illustrated by land use restrictions like building moratoriums. In the next chapter the cases impinging on the individual right to work and earn a living, range from a vanpooling business to teaching hair styling, in other cases retailers are punished for selling products below established prices and a host of other ridiculous impediments to earning a living are detailed. The authors note that one in every five occupations requires licensure!

The final cases discussed concern use of racial quotas in school enrollment, weighing the ideology that the law is color-blind against decisions supporting setting aside seats for students of diverse racial backgrounds. That is followed by two postscript cases that didn't make the dirty dozen, and the text of the United States Constitution.

Drawing Conclusions

The Dirty Dozen expresses strong political leanings, though it drubs Republicans and Democrats, conservatives and liberals equally, and in doing so gives repeated impetus to ponder restoring America as a nation governed by the Constitution.

I dislike the idea of a "living," malleable constitution, and despite the authors' parallel views, their detailed analysis of the issues behind *The Dirty Dozen* made me reconsider my opinion and ask if today's larger population using the technology of over 200 years of development can enjoy proper protections from so old a document. After reading the afterword about judicial activism, I agree that the ethical course of action is using the established Constitutional amendment process if the Constitution as written no longer serves the nation. To do otherwise breaks faith with our Nation's founders.

*[End of article.
Please enjoy the next article.]*



Networking

by Brady Wright

As I write this, we are at last digging out from the long weekend at the NRA annual meeting in St. Louis, where we spent three days in a HUGE conference center with so much booth and display space that I seriously considered buying a new pair of running shoes just to wear while we were there!

I lost count of how many members, current and new, stopped by the Network booth to chew the fat and talk about the things that mattered to them. I wish I had a dollar for every conversation that centered on the Zimmerman case or the appearance by Mitt Romney.

In addition to bringing many new Affiliates on board at the meeting, I also had a chance to renew contact with some of our friends in the business. Jared French, son of Jay, the owner of CCW Breakaways, got married in the last year and I took the opportunity to congratulate him on his good fortune.

We met a very energetic businesswoman named Lisa Looper, who has a product called Flashbang Holsters. She makes and sells some very deep concealment rigs for women through her website <http://www.looperlawenforcement.com> and the links there will give you many more details than I can share. We are proud to have her as a new Affiliate in the Network. Let me just say that they are cool enough that my wife DEMANDED that I buy one for her.

We also met the guys behind a company with a fun name and a great holster line. Nate Johnson and his partner, Nate Beard, make concealment holsters with some great features. Their company name is both memorable and clever. They are called "N82 Tactical." If you say it like a math formula, it comes out, "Nate Squared." I like it! Check out their line at <http://www.n82tactical.com>. Nate Squared will now be including one of the Network's brochures in each mail order package they send out to their customers.

I wish there was room to mention all of the folks who

stopped by but I do want to give shout outs to a few of our friends. I spent time talking with Dan and Tod from Recluse Holsters <http://www.recluseholsters.com>, one of our affiliates. Jim Hurtt of Hurt's Superstore came by to say hello. The gun media crowd was in attendance with Tim Garrett, from High Caliber Radio, Mark Vanderberg of the Gun Rights Radio Network, and Mark Walters of Armed America Radio all spending time with us. Dennis Brislawn, JD, from the Northwest Gun Law Group came by to check in and David Stroud of the Texas State Rifle Association visited with us and shared some thoughts.

As I said, the list of folks who took their time to talk with us at the booth is just too long to list here. We brought many new affiliates on board and they will be featured in upcoming sections of the *eJournal*, as well as being listed on the website.

There was also the usual crowd of notables and celebs at the meeting, including many of the shooters from *Top Shot*. I had conversations with Eric (Iggy) Keyes and R. Lee Erney (the Gunny), as well as Ian Harris from the first season. Greg Littlejohn took time while walking the aisle to talk about his favorite challenge in the show, and I had lunch and conversation with Gabby Franco. Big Mike Hughes, from Season 3, took some time to recall some of his own best moments from the show.



Finally, I must say how great it was to spend the better part of two days with Massad Ayoob. As you know, Mas is on the Advisory Board of the Network, and many of you may well have taken training from or with Mas

over the years. While there is no need to detail his reputation or qualifications to any reader here, what is more important to know is that Mas is one of the more laid back human beings you could meet. In addition to being available at the booth for the personal appearance scheduled on Saturday, Mas spent a good part of Friday at the booth, just talking with folks and sharing his expertise with anyone who asked. I first met him about 20 years ago and it was great fun to spend a weekend catching up.

There's more to come next month from your Networking fool. Stay safe out there!

*[End of article.
Please enjoy the next article.]*

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Editor's Notebook

A Big Gift for the Legal Defense Fund

by Gila Hayes

At the end of March, I briefly exchanged emails with a couple wanting an address to send a contribution to the Legal Defense Fund. How I appreciated these members' good intentions! When the check arrived, I was greatly astonished to see that the amount was \$2,500, making this the largest contribution to date given to the Legal Defense Fund. These good folks are repeat benefactors, having contributed \$1,000 to the fund not long after the Network started up. In addition, each month about a half-dozen members send checks as additional Legal Defense Fund gifts, or make a contribution along with their membership renewal. While I express my appreciation privately to these members, it seems only appropriate to recognize their largess in a public manner, as well.

Here's the reality: it is one thing to say we support a concept like gun rights, or saying that gun owners ought to get good legal representation after a self-defense incident; it is quite another to "give until it hurts" to assure that the means will be available if a Network member has an incident and needs assistance. That has been the situation twice in the four-plus years the Network has been operating. In both instances, we connected the members with Network Affiliated Attorneys, and through their representation avoided defending criminal charges in court.

If you read the lead article in this month's journal, you probably noticed the quote from trial lawyer Mitch Vilos, "Good lawyering sometimes happens long before any kind of a hearing, or before charges are brought. That is why I like your organization because you provide your members with funding whereby they can get an attorney

immediately. A lot of times, the charges aren't even brought if the attorney investigates the case thoroughly before it hits the news media. Once it gets to the media, the prosecutor may feel like he has to prosecute, like in the Duke lacrosse case." One use of the Legal Defense Fund is to provide an immediate deposit against attorney's fees to be sure what Mitch described happens as quickly as possible.

We know good representation early after an incident is critical! We also recognize that at times a member may become embroiled in very complex situations from which he or she is able to escape only by display or use of a firearm. The more multifaceted the situation, the more likely it is that police and prosecutors will charge the armed citizen with a crime, preferring to put the decision-making in the hands of a judge or jury, as Vilos also explained in his interview.

Sadly, we know that the day will come when unfortunately one of you, our Network members, is unavoidable drawn into such a situation. But here is the good news: the Legal Defense Fund that will support that unfortunate member grows larger each day with the help of our generous benefactors, with 25% of every new membership and membership renewal, and each time our V.P. Vincent Shuck auctions an item contributed by a Network Corporate Sponsor.

I am so very grateful that we've not yet needed to assist in a full-blown court case defending a member's self-defense actions, but I know that day is coming and because of that, I am overwhelmed and so very grateful for the contributions that regularly swell the Legal Defense Fund.

Words Matter!

Despite being part of a society that communicates through slang and shorthand-like phrases, we need to be careful about letting misleading verbiage slip into our language. My pet peeve this month is the term "good shooting." You can't read a gun forum on the Internet without running into multiple examples of this phraseology. We need to take great care in the words and opinions we express, asking if each sentence is something we would be willing to be questioned about by a prosecutor in court.

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The term "good shooting" is borrowed perhaps from law enforcement where a police officer's use of deadly force was found appropriate and necessary, but discussed among the rank and file as a "good shoot." In my opinion, this description has absolutely no applicability to circumstances under which a private armed citizen's survival options are reduced to the necessity of using deadly force to avoid death or crippling injury. There are plenty of truthful descriptors – "justifiable" springs immediately to mind – that cannot be misconstrued by the many who would be quick to twist a justifiable use of deadly force into something criminal, negligent or malicious.

Don't kid yourself, the words we use in daily conversation are guaranteed to pop up in stressful moments. Do you really want to tell a prosecutor who is interrogating you that what you did to save your life was a "good shooting," and then explain to the jury what was "good" about it?

*[End of May 2012 eJournal.
Please return next month for our June edition.]*