Initial Aggressor: Losing the Right to Argue Self Defense

Part 2 of an Interview with Attorney Jim Fleming

Interviewed by Gila Hayes

In last month's journal, we started a lesson with Network Advisory Board member and attorney Jim Fleming. With nearly 38 years of work as an attorney after a law enforcement career, Fleming is uniquely positioned to teach about initial aggressor legal issues. A law-abiding citizen, claiming he or she was using force in self defense, can find their self-defense decisions are overshadowed by foregoing events to the extent that the criminal justice system will not allow the accused to cite self defense as the reason for injuring or killing an attacker.

Last month we discussed the effect of verbal threats, regaining the right to use force in self defense by a good-faith communication of withdrawal from the fight, and the responsibilities of the jury in weighing all these concerns. If you missed that installment, please browse to https://armedcitizensnetwork.org/initial-aggressor, absorb the details Jim discusses there, then return to this page for the second installment.

eJournal: You've introduced us to the technicalities of defending self defense last month as you've done that often in the past, as well. This is an issue into which we put a lot of time and invest a lot of funding and effort to make sure members understand. How in the world do you, a skilled and experienced defense attorney, make sure the jury shares the same understanding?

Fleming: You've heard the catch phrase, "I deserve a jury of my peers." Really? Well, let's think about that for a minute or two. At 3 o'clock on a summer morning, you're awakened by sounds coming through your screen window and you go outside and you find this guy who is going through your car. You confront this individual and he comes boiling out of the car with a tool. I specifically say "tool" because I don't want people thinking about this in terms of weapons versus non-weapons, so let's say that he comes up out of the back of your car with a Pepsi bottle. Don't freeze up trying to figure out, "Is that a weapon or is it a Pepsi?" No, you should ask yourself, "Is it a tool?" Yes, it is a tool that can be used to fracture your skull and kill you.

If this happens and you end up pulling the gun and shoot and stop this individual, maybe you'll get charged because the prosecutor is over-zealous or because the prosecutor has a political motive because it is election year–who knows? How many of people filing in at the beginning of a trial to become part of the jury are your peers? How many of them have gone through that experience such that they will understand what you dealt with? The chances are extremely small that you are going to encounter anybody like that and if there is, the prosecutor will kick them out of that jury pool just as quick as they can because they don't want people like that on the jury.

You are not going to get a jury of your peers, so part of the defense attorney's job is to present the defense case in such a way that it turns jurors into a jury of your peers by creating an understanding of the issues and the actions and the decision. As part of the trial process, I'm trying to create an understanding in the minds of those jurors so that they can put themselves in the shoes of this person who has been accused and charged, to decide whether they were justified in what they were doing.

eJournal: Will a jury be encouraged to consider only that moment at which you drew your gun or are they going to be told to judge all of your decisions, from the moment you heard the noise that made you decide to go outside to see what was happening out there?

Fleming: The whole thing, but you can't assume what the prosecutor will do. Look, in the course of my career of almost 38 years I have worked with a lot of prosecutors and the vast majority of them are good,

[Continued next page]

principled people. Every so often, I have run across a few prosecutors that I realized that I could not trust, but that hasn't happened very often.

The point is, you may get a prosecutor that, for tactical reasons, is going to try to get the jury to focus only on that split second. As the defense attorney, what I have got to do is help the jury understand that you have to analyze that split second, but you have to analyze it in the context of what went on before. If you don't, you are blindfolded and have ahold of only the tail of the animal, and you are going to touch the tail, and sniff the tail, and taste the tail and from only that tail, you are going to try to decide what that animal looks like based only on that limited exposure that you have.

In order to truly understand the situation, you have got to understand what has happened before. Look at the extent to which they talked about wider things in the George Zimmerman trial. The prosecutor was trying to get them to focus on one tiny, frozen moment in time, and the defense would not let them do it. The defense brought up all of the different things that were part and parcel of what had taken place that night.

I think George was acquitted, #1, because he was innocent and he did not do what the prosecutor had charged him with doing, but I think that people suddenly came to the realization, "Wow! That could have been me! That could easily have been me." That helped. George was not out on patrol that night; he was on his way to the grocery store, and this whole situation developed as a result. When the gun was fired, it was during a struggle for control of the gun between George and Trayvon Martin. At first, George's biggest fear was that the shot had gone through the window of a home and had hit one of his neighbors. He did not realize it hit Martin. The defense helped the jury understand that whole situation as opposed to that frozen moment in time. You can't let a prosecutor do that; you have got to fight for it.

eJournal: So many use of force incidents involve long-standing fights with neighbors or sometimes violent family disputes. Does previously acting as initial aggressor negate the ability to claim self defense in a later encounter? How much time would need to pass before an extended dispute is no longer part of the episode that just ended in use of force? What's the role, if any, of past hostilities in judging an incident?

Fleming: That's a lot of questions right there. It would not negate the ability to claim self defense. However, it would very likely be ruled to be a "prior bad act," which under the Rules of Evidence can be introduced by the prosecution.

Rule 404(b) of the Rules of Evidence as commonly stated says—

> Evidence of other crimes, wrongs, or acts is not admissible if the sole purpose for offering the evidence is to prove the character of a person in order to show that the person acted in conformity therewith. It is, however, admissible for other purposes, including, but not limited to, proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

So, if the prosecution can get it in under one of the exceptions, there is virtually no way to assure that the jury will not consider it as evidence of a propensity to act irresponsibly, which can be just as damaging, and virtually impossible to correct. *[For important, additional details, we direct our readers to Jim Fleming's instruction on character evidence in our February 2018 eJournal https://armedcitizensnetwork.org/introducing-character-evidence .]*

eJournal: Do initial aggressor issues negate a claim of self defense if people are involved in a mutually-agreed upon fight that changes in severity mid-stream. Let's say one combatant is losing the fight–maybe additional opponents pile on or the other person increases the force from fists to a deadly weapon? Maybe there's no opportunity to safely express good-faith expression withdrawal from the fight due to escalation by both sides.

Fleming: Tremendously complicated questions. In general terms, mutual combat is simply the idea that if two people consent to engage in some type of physical altercation–a fist fight, a wrestling match, something of that nature–an individual later, when they realize that they are losing, cannot suddenly pull out the knife or the gun or the club and kill or severely wound their opponent. Because they agreed to engage in a fight, they cannot do that simply because they are losing.

Mutual combat is treated as a limit placed on self defense. Essentially, a person who engages in mutual combat only has a right to use self defense if he stops fighting, indicates that he or she wants to stop fighting, and gave his or her opponent a chance to stop fighting.

[Continued next page]

Mutual combat is where a fight begins because of mutual consent or agreement whether implied or expressed.

Now, the way that you defeat an accusation of mutual combat is to be able to say, "I articulated to this individual, 'I am no longer going to be involved in the fight, I am not consenting to fight any more, I am giving up the fight and I am walking away from the fight.'" You made it very clear to them by your actions and your words, "I'm done! I am not fighting anymore. We are done here," and you start to walk away.

If the individual continues to fight in such a way that you begin to apprehend that you could end up dead or severely injured as a result of this situation and then you apply deadly force in self defense, you will be alright. That doesn't mean that the prosecutor is not going to argue the point, but it means that under the law the burden has shifted back to the prosecutor.

This is an important concept that you have got to understand! Everybody talks about the burden of proof and says, "Well, in a criminal case, the burden of proof is always with the prosecution." Well, that is not true! Not always! Typically, it is not in the non-stand-your-ground states, for example.

The reason has to do with the way the stand-your-ground states articulate the protections that are afforded the self defender, so let's set those states aside. Now we are talking about what is commonly referred to as a Castle Doctrine state. People get this wrong all the time because the Castle Doctrine simply states that inside your own home you have no duty to retreat before you use deadly force IF it is otherwise justified. The converse of that is if you are out on the street and away from your home, then you have a duty to retreat before using deadly force IF you can do so safely.

Do you see all the jury questions that are exploding like landmines in those words?

You have the initial burden in that Castle Doctrine state to provide some evidence supporting your claim of self defense. You don't have to lay out your whole dog and pony show, but you have got to provide some evidence. Once you have done that to the judge's satisfaction, then the judge will rule that you are entitled to a self-defense instruction.

That is incredibly important and people don't understand it because it is that self-defense instruction that you are going to get at the end of the trial that allows the defense attorney to bring in all of the evidence that relates to self defense. After the self-defense instruction is given, then they can make the argument in their closing arguments about how the facts that have come out support the argument of self defense.

There is an initial burden on the part of the defendant to provide some evidence so that they can get their instruction and then the burden shifts back to the state to try to overcome that. Having said that, now let's return to mutual combat. With mutual combat you are going to say, "Wait a minute! I shot this guy in self defense" and the state comes back and says, "No, you didn't–this was mutual combat." Now, you have the burden of showing that it was not mutual combat.

How do you do that? You have to bring in evidence to show that you articulated through your words AND your actions that whereas it might have started as mutual combat, you desisted; you stopped. You said, "I'm done. I'm not going to fight with you anymore. I'm walking away from this. Leave me alone, I don't want to fight with you anymore," however you word it, but be sure you have said that.

Once you have met that burden of showing what you did, the burden shifts back to the state to argue that it wasn't self defense. Quite often people miss this concept of shifting burdens. They don't realize that this shifting burden is there and that it has to be met, because if it is not, they can jump up and down and talk about self defense all they want but they ain't going to be talking about it in that court room! The jury is never going to hear it.

eJournal: How uniform are mutual combat laws around the nation?

Fleming: In almost all jurisdictions, if a person started the fight using non-deadly force and the opponent suddenly escalated the fight to deadly force, the other person may defend himself or herself using deadly force. *People v. Quach,* 116 Cal.App.4th 294, 301-302 (2004) is such a case. The California court ruled that when substantial evidence supports a theory of mutual combat and self defense, the government has the burden of showing the act of mutual combat was not in self defense.

South Carolina is another jurisdiction with virtually identical rules. If the accused voluntarily participated

[Continued next page]

in mutual combat for purposes other than protection, he cannot justify or excuse killing or injuring the opponent in the course of the fight on the grounds of self defense, regardless of what extremity or imminent peril he may be reduced to in the progress of the combat, unless, before the killing or injury occurs, he stopped fighting and made a good faith effort to refuse to carry on the fight, and, either by word or act, made that fact known to the victim.

Texas is very similar in that while mutual combat is seen as combat by consent, a person cannot consent, in any fashion, to be beaten severely or killed.

Can you see how completely fact dependent these things are? Who gets to decide what the facts of a case are at trial? The jury. A group of people who do not know you, have never in their lives themselves been involved in such a situation, and whose true attitudes, secret biases and agendas will never be known before they are called to sit in judgment of your actions.

eJournal: What about defense of a third party one fears is an innocent being harmed by a criminal? Does the person acting as rescuer risk an initial aggressor accusation?

Fleming: Defense of others involving deadly force requires that a threat of death or crippling injury to that person at the hands of another be perceived. That attacker is already using deadly force, to which you are simply reacting. Again, it's about proportionality, and perceptions of fact.

If the third person was the initial aggressor and is suddenly losing, your use of deadly force to save their bacon will be extremely risky, and, of course, actions that happen in seconds will later be analyzed over weeks if not months by individuals who were not there and were not involved.

eJournal: Have you had or are you aware of someone who used force reasonably in self defense, but were denied a self-defense jury instruction or not allowed to present any arguments about self defense? What aspects of what they did was the most damaging?

Fleming: Every defense lawyer is aware of situations of this type, and the reports of appellate decisions are filled with them. The facts are so varied, you could fill up volumes upon volumes with the things they did wrong: everything from being a first aggressor, to not being able to prove a good faith belief of personal peril, to using force not in proportion to the threat perceived, failure to retreat where retreat was required and so many other factors.

Often times, people are undone by their failure to keep their mouths shut when confronted with first responders, failing to articulate their choice to remain silent until their attorney is present and giving well-intentioned statements are filled with inaccuracies as the result of adrenalized distortions of memory and perception of the event. As an investigator told one of my clients in the aftermath of a gun fight in which the client shot to save himself and his wife, "You have the right to remain silent. For God's sake use it!"

eJournal: This is a big topic with a lot of facets that many of our readers, like me, may not have previously considered. Jim, what is the main take away from all the concerns we've discussed today?

Fleming: Based upon what it is you're reacting to, you can see a difference between a normal reaction to a situation and actions that will almost undoubtedly be characterized as those of an initial aggressor. If you are reacting to the type of aggressive action and threat that could potentially carry with it the loss of your life or you sustaining some type of crippling injury, I am not going to guarantee you that a prosecutor isn't going to try to cast you as an initial aggressor. As your defense attorney, I can't prevent a prosecutor from attempting to make that argument. What the individual can do to defeat that is to make sure that what their actions or words are in response to is proportional to what they are dealing with.

___

Attorney and Network Advisory Board member Jim Fleming practices law in MN, an attorney of more than 37 years trial and appellate court experience in MN, NE and has argued both civil and criminal appellate cases in the State appellate courts as well as before the Eighth Circuit Court of Appeals. He is the author of several books: Aftermath: Lessons in Self-Defense and The Second Amendment and the American Gun: Evolution and Development of a Right Under Siege. Jim and his wife Lynne Fleming operate the firearms training school Mid-Minnesota Self-Defense, Inc. where Jim is the lead instructor. Learn more about Fleming at http://www.authorjimfleming.com and his law practice website at http://www.jimfleminglaw.com/about-1.html.

President's Message

The Quickening

by Marty Hayes, J.D

In looking back over this past month, and then further back into the past several months, I am reminded of the time when I worked graveyard patrol in a very small town. This was long before I even went to law school, long before the concept of the Network had entered my mind. I had started The Firearms Academy of Seattle by then, but it wasn't making enough money to support us while continuing to build the academy. As a result, I took this job to supplement our income while we built the school. During this time, when one of the most challenging tasks on night patrol was simply keeping awake, I became a fan of Art Bell and his late night talk radio show, "Coast to Coast AM." For those familiar with Art Bell and his show, you know he discussed some pretty strange stuff.

I will be the first to admit that I was skeptical about most of what was discussed on the Art Bell show, but since it was on the only radio station I could tune in where I was working, I grew to enjoy the mental process of deciding "Truth or Fiction." One phenomenon he discussed on several occasions, was called "The Quickening," and I believed it held a little more truth than fiction. As I understood this phenomenon, it meant an acceleration of activities to the point where so much is happening so quickly, one cannot keep up with it and is eventually overwhelmed.

It is interesting to look back 20 years, and see just how much more hectic, chaotic and fast-paced our world has become. In some respects, I put the blame onto the never-ending 24/7 news cycle. In order for news outlets to keep viewers and listeners, each day they must produce sensational headlines because ratings drive income. Unless it is public radio or public television, the news outlet needs that money to survive. The result is more sensational headlines and increased bombardment of our senses with stimulation.

But, I believe, this is not all. It certainly seems that things are coming at us faster and faster. An example is the many news accounts of riots, with shootings, lootings and burnings, reported each and every day. We have Kenosha, Ferguson, Portland, Seattle, just to name a few. This just didn't happen 20 years ago, with the singular exception being the LA riots after the Rodney King incident and acquittal of the four LAPD officers involved in the incident. Now, there is no wait for rioting, a police officer just defends him- or herself, and the riots are off and running.

Additionally, there is the political scene. The sun cannot rest a single day without a new "blockbuster" allegation made about one politician or another–so many allegations, that they become very easy to ignore.

Next, let's heap a global pandemic onto the scene, complete with daily warnings of impending death for all, and when today's warning doesn't come to fruition, let's simply dream up another warning, and so on and so forth. They say, "Follow the science" but I have not been able to pin down any science to follow, because what is touted as science seems to change every other day. Wear a mask, don't wear a mask; stay away at least 6 feet from each other, etc. Of course, it is okay to have a myriad of exceptions to these rules. It reminds me of trying to read the fish and game regulations! Just think if they changed THOSE on a routine basis. Oh wait, they do, and that's one more thing to keep up with.

Sadly, Art Bell passed away a couple of years ago, due to (according to the Internet) an accidental drug overdose. At least that is what the coroner said. I have to wonder though, did "The Quickening" just get too much for Mr. Bell, and he decided to slow down. We will never know.

Attorney Question of the Month

The source of this month's discussion with our Network Affiliated Attorneys is Network members expressing concern about their best course of action if, despite their best efforts to avoid violence-ridden areas, they are caught in traffic during a riot and threatened while in their car. To help our members strategize and act in legally defensible ways, we greatly appreciated our Affiliated Attorneys' comments on these questions–

What legal repercussions would result if an innocent motorist, threatened by a mob they see harming motorists pulled from cars or threatened directly by a violent attempt to break into their car while they are inside, drives deliberately through the area with flashers and horn active but hits and injures a person as they attempt to drive to safety?

How does the motorist's responsibility change if the person hit is actively involved in the rioting or if it is another innocent person also attempting to get out of the danger area?

Does the motorist's responsibility change if they hit a protestor blocking an onramp, offramp or city street who is not immediately threatening violence against them or other drivers? What, if any, role does fear of being blocked in and later harmed contribute to justifying a motorist endangering the lives of pedestrians blocking roads or freeway ramps during violent protests?

John R. Monroe
John Monroe Law, PC
156 Robert Jones Road, Dawsonville, GA 30534
678-362-7650
http://johnmonroelaw.com

In my state (Georgia), an attack on a motor vehicle is treated the same under the law as an attack on a home. A violent attack on a vehicle authorizes the use of deadly force on the attacker. So, the motor vehicle itself could be used as a weapon against the attacker. But force is not authorized against third parties who are not part of the attack. Furthermore, a person does not have authority to use force (deadly or otherwise) against someone who is blocking a public roadway, at least not in a self-defense context. A person does have authority to make a citizen's arrest of someone blocking a roadway, and to use force (but generally not deadly force) to make that arrest. But using force to abate the crime is not the same as using force to make an arrest.

A fear of later harm does not justify present use of force. Self defense is allowed to prevent imminent harm, not harm at a later time.

Randy L. Robinson
Attorney at Law
PO Box 682, Augusta, ME 04330
207-653-6749
jurdoc35@hotmail.com

In Maine, you can use deadly force if you have a reasonable fear that you are about to be killed or subjected to great bodily harm. Fear of being blocked in would not justify doing something that can be deadly.

You can also act to keep someone else from being killed or subjected to great bodily harm. Just make sure you do not hurt or kill an innocent bystander.

Marc S. Russo
25 Plaza Street West Apt 1-K, Brooklyn, NY 11217
718-638-5452
mordvin9@gmail.com

The answers to all of your questions are heavily dependent on the law of the state the hypothetical motorist is in at the time. There would—even in self-defense friendly states—always be the issue of "imminent danger" which would be a jury question. Meaning, that even if the law is friendly and reasonable, your jury pool may not be if the incident occurs in an urban area. For example, Missouri law might help you, but some St. Louis jurors may still want to fry you. You'd still have issues of negligence and liability for any non-violent demonstrators hit, even if the motorist was fleeing a dangerous mob. At least in a negligence situation your insurance company would provide a legal defense and indemnity (of course only up to the policy limit). But in an intentional self-defense situation they wouldn't provide liability coverage, and—depending on the company—possibly not even a defense. If the motorist has the technology, he should try to record the event and document any damage to the vehicle.

[Continued next page]

Thomas F. Jacobs, Esq.
271 North Stone Avenue, Tucson, AZ 85701
(520) 628-1622
tjacobs@jacobsazlaw.com

What legal repercussions would result if an innocent motorist, seeing rioters harming others pulled from cars or threatened directly by a violent attempt to break into the car they are in, drives deliberately through the crowd with flashers and horn active but hits and injures a person while attempting to drive to safety?

This question, like the questions that follow, presents a hypothetical situation that is drawn from real life events reported by the media, observed by citizens and/or caught on video. From the standpoint of criminal liability, this scenario presents the all-encompassing fact question: Would a reasonable person in the same situation believe he/she was in danger of serious physical injury or death? In Arizona, as in most if not all states, a motor vehicle is considered a dangerous instrument for purposes of analyzing criminal liability. From the standpoint of civil liability, this scenario presents the question: Did the person causing the injury owe a duty of care to the person injured and did he/she breach that duty? In Arizona, which is a contributory negligence venue, the actions of the injured party may be considered as contributing to or causing their own injury.

Looking at the question from a criminal perspective and asking, "What would the legal ramifications be?" we can state that it is POSSIBLE the driver in this scenario might be charged with aggravated assault with a dangerous instrument. Arizona, however, like most if not all other states, offers relief from criminal liability in certain situations where a person may be justified in committing what otherwise might be considered a criminal act. The questions pretty obviously arise from recent incidents in which a police vehicle was driving through a protest/riot scene with flashers and horn, and struck a pedestrian, and the same occurred in Visalia, CA, involving civilians in a Jeep who were pelted with water bottles before attempting to drive through a crowd. Notably, in the first situation, the vehicle was seen starting and stopping to avoid people standing in front of it, then driving quickly forward after someone climbed or attempted to climb onto the vehicle. In the second situation, the occupants of the Jeep (who will apparently not be charged with a criminal violation) were pelted with water bottles by members of a crowd blocking the road.

No criminal charges were filed against the driver in either of the above real-life incidents, although the Detroit incident is still technically under review. The Tulare County DA has declined charges against the driver of the Jeep. In each case, the prosecutor has discretion to charge or not charge a criminal offense. The decision may depend on the policies of the assigned prosecutor's office, the facts surrounding each incident, and to some extent the political atmosphere of the venue where the incident took place. In the scenario presented by the question, it seems that a reasonable person would fear for his/her safety and would be justified in driving through. Ultimately, citizens or police acting reasonably under any circumstances should not expect to be prosecuted for their conduct.

Victims of so-called hit-and-run incidents are free to assert a civil claim against the driver of the vehicle, even if criminal charges are not filed. The standard of proof for a civil claim is less than for a criminal claim. However, rioters or protesters who illegally block traffic and then deliberately place themselves in front of moving vehicles in an area where vehicles are being "attacked" are not likely to garner much sympathy with a jury. This kind of conduct is akin to that of so-called "gypsy" personal injury fraudsters, who deliberately cause cars to hit them in order to collect a settlement from insurance. Contributory negligence would certainly play a role, as with the person seen pushing the police SUV from the front in the Detroit video. It was obviously dangerous for the pedestrian to engage in that conduct, and a reasonable person would not see that conduct as necessary or prudent. Therefore, the pedestrian would bear most if not all of the responsibility for any injury he may have suffered.

How does the motorist's responsibility change if the person hit is actively involved in the rioting or if it is another innocent person also trying to get out of the danger area?

A person who is engaged in some form of "rioting" is still a person, and usually cannot be subjected to use or threatened use of deadly force simply because he/she is behaving badly. However, once he/she threatens or takes harmful action against another person, those actions may justify a response that might include deadly force or other reasonable action offered in defense of person. In the case of a rioter, if that person is actively

[Continued next page]

the conduct described in the hypothetical. In the case of threatening or harming the driver or driver's vehicle, it is highly unlikely that criminal charges would result from an innocent pedestrian, the same would likely hold true unless the driver drove in a reckless or intentionally dangerous manner in trying to avoid the riot. However, the innocent pedestrian would have a civil claim against the driver, and the rioter as well.

Does the motorist's responsibility change if they hit a protester blocking a roadway who is not immediately threatening violence against them or other drivers? Does fear of being blocked in and later harmed justify driving through and endangering persons blocking roads or freeway ramps during protests?

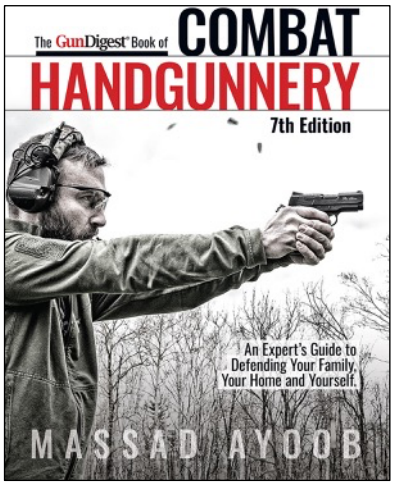
This last scenario presents the most likely or common circumstance. Drivers on a roadway are not permitted to run over or strike pedestrians blocking their path. Even where a pedestrian is illegally in a roadway (such as a common jaywalker), civil or criminal liability may arise if a vehicle is driving negligently such that the collision could have been avoided by the driver (civil) or where the driver conducts a vehicle in a reckless or intentionally dangerous fashion and cause injury (criminal). Thus, in both the criminal and civil context, the law asks whether the driver acted reasonably to avoid causing the injury. The question also presents a hypothetical if the driver becomes concerned about possible future injury or threat caused by the crowd. That would depend on the individual circumstances and threats actually presented to the driver and passengers (if any). Threats may develop rapidly, and witnessing a hostile act may justify defensive action, such as driving through a crowd. In most cases, what prosecutors will support as criminally prohibited is intentionally or recklessly driving through a crowd of protesters in an effort to disrupt the event or cause harm.

A big "Thank You!" to our affiliated attorneys for their very detailed contributions to this interesting discussion. We got so many great responses that we will carry the second half over for publication in next month's journal. Please return next month for more discussion from our affiliated attorneys on this timely topic.

Book Review

The Gun Digest Book of Combat Handgunnery - 7th Edition

by Massad Ayoob
ISBN 9781951115203
https://www.gundigeststore.com/product/gun-digest-book-of-combat-handgunnery-7th-edition/
$24.99 digital; $26.99 Paperback



Reviewed by Gila Hayes

With the release of the seventh edition of *The Gun Digest Book of Combat Handgunnery,* author Massad Ayoob recognizes the authors of previous editions of this classic compendium, starting with the first edition released in 1983, written by Jack Lewis. Ayoob authored the fifth and sixth edition of *Combat Handgunnery,* preceded by Chuck Taylor who wrote the fourth edition and Chuck Karwan, who authored the second and third editions. While the shoes to be filled are large, it is hard to imagine an author better qualified to fill them.

Ayoob introduces his topic by noting that human violence necessitating self defense is as old as humanity and little changed, so an updated seventh edition, he notes, focuses on new understanding of, "the physiology and psychology of shooting, particularly under extreme stress."

Other areas of change include the legal landscape, he continues, commenting on the greatly increased "provision at law for the honest citizen to carry a loaded, concealed handgun in public" compared to 1983 when the title's first edition was published. Like the first edition, the seventh's stated goal "is to transmit a working knowledge of the current state-of-the-art of defensive handgun technology and its corollary topics, of how to effectively use them and how to find out how better to use them and more importantly, when to use them," he notes.

Ayoob reprises as the decades-old argument of revolver v. autoloading pistol as it is affected by guns in current production. The revolver has advantages of administrative handling, simplicity of function, ammunition versatility and reliability, to cite only a few of his arguments. The autoloader, he notes, has a higher hit potential under stress, has superior ergonomics, greater ammunition capacity, is faster to reload and the flatter profile aids in discreet concealment, he accounts among other favorable factors.

Other hotly contested disagreements on which Ayoob weighs in include use of a manual safety on traditional double action pistols, point shooting or aimed fire or use of a rough aiming index, and the perpetual "caliber wars." The latter he follows with an extensive chapter on ammunition selection including brands, calibers and bullet composition and design. He closes by stressing, "Let's close with what every side of the debate agrees on: shot placement is the key concern, and time spent agonizing over non-existent magic bullets is better spent practicing to shoot and hit rapidly under high stress."

Discussing how extreme stress in a life and death situation interferes with many of the techniques taught, Ayoob discusses the practical application of handgun use, recognizing loss of dexterity under a fight or flight response's adrenaline dump and the concomitant strength gain. Of initial concern, Ayoob introduces is how the shooter grasps the handgun–one handed or with two hands. "The grasp needs to be strong enough to maintain control of the firearm even if the gun or hand are grasped or struck, both predictable occurrences in the sort of situation that is the combat handgun's *raison d'etre,*" he notes and gives the topic of grip such importance that it is discussed in three separate chapters.

He discusses shooting stances, identifying advantages and disadvantages in the three commonly taught, how they adapt to various real-life challenges like shooting from awkward positions or against threats to the rear or flank, and with one hand only. He comments, "we can't always jump into our favorite position when attacked. The shooter needs to know how to fire effectively whether his strong foot is forward, or his weak-side foot is forward, or his feet are parallel."

Concealed carry mistakes ranging from inadvertently allowing the general public to see the gun, interacting

[Continued next page]

with police on unrelated matters, couple with security against theft or misuse of a gun kept at home in a subsequent chapter. He wraps up this topic with the advice: "No matter where your gun is stored, it is possible that a violent intrusion will happen so rapidly that you can't get to it in time. The one way to always be certain you can reach your gun is to always wear it."

Nearly all gun owners love accessorizing, customizing and "improving" their guns, and while there are definitely time-proven modifications, some custom alterations are catastrophic, not only by interfering with the gun's function if employed under stress, but some raise serious, indefensible questions if investigated by police or challenged in the courts. Chapter 12, entitled *Accessories And Handgun Enhancements* is a great compendium of the good, bad and the undesirable.

Beveled magazine wells, carry optics, extended slide releases, magazine releases and thumb safeties are evaluated, as are night sights and pistol-mounted lights, the latter of which he opines, is like "using the telescopic sight of your rifle to scan for game: you're pointing a loaded gun at anything you look at. I want a heavy trigger pull and/or an engaged safety on the weapon to which my light is attached. This will minimize the chance of a 'startle response' causing an unintended discharge when the user sees something that startles him but doesn't warrant a deadly force response."

Ayoob closes *The Gun Digest Book of Combat Handgunnery* with a discussion of priorities, explaining, "Training is always a better investment than equipment. Software in your brain is always with you, and there's only so much hardware you can carry. And there are places where you can't carry this kind of hardware at all. I take at least a week of training a year for myself, and would recommend the same regimen to you."

But training doesn't take top spot, he prioritizes, adding, "Awareness and alertness are more important than combat tactics, because they can keep you out of combat to begin with. Tactics are more important than marksmanship, because they can often keep you out of danger without you having to fire a shot. Skill with your safety equipment, including your weapons, is more important than what type of weapon you have. With all those things accomplished, your choice of equipment is one of the few things you can work out before the fight, so it makes sense to have the best quality gear of a kind ideally suited for your predictable threat situation," he concludes.

The seventh edition of *The Gun Digest Book of Combat Handgunnery* is classic Ayoob, and fans of this prolific writer and instructor are sure to enjoy this review of the principles he has been teaching us for years. With troubled times bringing many new gun owners to the ranks of armed citizenry, the release of an updated edition of *Combat Handgunnery* is well-timed and will make an excellent gift to start a new gun owner on the path of the responsibly armed man or woman.

Guest Commentary

by Emanuel Kapelsohn, Esq.

This month's Attorney Question of the Month column starts by asking us to assume the reader has done "everything possible" to avoid becoming engulfed by the rioting, I'll let other attorneys answer from there going forward, and will deal with the "Left of Bang" issues. From my experience as security director in charge of the 11-man protective team for a wealthy principal, if someone attacks the principal, putting aside whatever we then do in direct response to the attack, we must understand (later on, of course) that the fact that the attack is taking place means we have failed in our primary and most important job, which is to plan, manage, and conduct the operation in such a way that no attack occurs.

Too many bodyguards, security officers, and even some private individuals with CCW's "think through their guns" meaning their thought process might be something like, "This is a dangerous route to take, but it will be okay because I have my gun." A 3,000 pound car is just a larger deadly weapon than one's gun. A big crowd, let alone a rioting mob, can quickly make it impossible to drive out of it to safety, even with flashers, horn, and willingness to hit one or two people who get in the way. And if you've hit someone while trying to drive to safety and you don't succeed in getting away, you can be sure the mob will literally try to TEAR YOU APART, and that you may not have enough rounds in your gun to keep you safe. I've seen this happen.

So, I think this inquiry most productively needs to start "Left of Bang," with questions like, "Do I really need to go out shopping tonight? Can my errand wait until tomorrow morning, when it's daylight, after I check out the TV news and call the local police station to ask if things are safe for a trip through that neighborhood? Is there an alternative route I can take that is safer, even if it takes me 5 miles out of my way and means I have to leave home 20 minutes earlier? Can I call and reschedule that dentist appointment? Can I call in sick, or simply tell my supervisor I don't feel safe driving to work today, given what has been going on in the area?" We really need to spend more time thinking about those things, and less time thinking about how many rounds the extended magazine for our new 9mm Phenortner 2000 holds.

If you haven't read *The Gift of Fear* by Gavin de Becker, you need to do that. Its main message is, when the hairs stand up on the back of your neck or you get that feeling that something is amiss, you're probably right! Don't delay, but follow your instincts to safety immediately, without delaying to try to analyze or identify the thing that is making you afraid. Because by the time you identify it, it may be too late to keep yourself safe. Once you get surrounded by rioters, or even by "protesters" or "demonstrators," it may be too late to extricate yourself, regardless of how many horsepower your vehicle has and how many people you are willing to drive over. The time to take action is when you see the demonstration four blocks ahead of you, or see the traffic piling up as it approaches the demonstration. IMMEDIATELY make a U-turn (or do whatever else you need to do) and GET THE HELL OUT OF THAT AREA IMMEDIATELY. Let the person who was not able to make such a good, quick decision worry about how best to utilize his flashers, gas pedal, and gun, about whether he will survive, about how many years thereafter he will spend in prison, and about whether or not he and his family will have any money left when he gets done paying for attorneys and experts for trials and appeals. Be sure now that however much mental energy you spend learning good "caught in the riot" vehicle tactics, you spend at least TEN TIMES as much time and energy planning how to avoid ever having to find out whether or not those tactics will work for you, in the unknown situation you are contemplating. This is the best advice I can possibly give.

Attorney and Network Advisory Board member Emanuel Kapelsohn practices trial law in addition to his work as a firearms consultant/expert and author. He holds degrees from Yale University (with honors) and Harvard Law School, and has, since 1980, instructed thousands of police and security officers, federal agents, military personnel and private citizens throughout the U.S. and abroad. He consults and provides expert testimony in both civil and criminal cases involving firearms and use of force and has testified in state and federal courts, and by invitation before both houses of Congress. Learn more about him at http://www.peregrinecorporation.com and http://www.lesavoybutz.com/emanuel-kapelsohn/.

About the Network's Online Journal

The ***eJournal*** of the Armed Citizens' Legal Defense Network, Inc. is published monthly on the Network's website at https://armedcitizensnetwork.org/our-journal. Content is copyrighted by the Armed Citizens' Legal Defense Network, Inc.

Do not mistake information presented in this online publication for legal advice; it is not. The Network strives to assure that information published in this journal is both accurate and useful. Reader, it is your responsibility to consult your own attorney to receive professional assurance that this information and your interpretation or understanding of it is accurate, complete and appropriate with respect to your particular situation.

In addition, material presented in our opinion columns is entirely the opinion of the bylined author and is intended to provoke thought and discussion among readers.

To submit letters and comments about content in the ***eJournal***, please contact editor Gila Hayes by e-mail sent to editor@armedcitizensnetwork.org.

The Armed Citizens' Legal Defense Network, Inc. receives its direction from these corporate officers:

Marty Hayes, President
J. Vincent Shuck, Vice President
Gila Hayes, Operations Manager

We welcome your questions and comments about the Network.
Please write to us at info@armedcitizensnetwork.org or PO Box 400, Onalaska, WA 98570 or call us at 360-978-5200