



Verbal Warnings *An Interview with Massad Ayoob*

by Gila Hayes

Law abiding citizens work hard to know the law and operate within its limits. Sometimes, though, when the law is silent on an issue, Network members are not sure what duties are required, and never is that truer than in the question of when, why and how verbal warnings should be issued before shooting. I have long said that the Network is not in the business of teaching tactics, to which some have retorted that what to expect from the criminal justice system after a use of deadly force incident influences their tactics. With that in mind, we engaged internationally recognized firearms and use of force instructor, expert witness on use of force matters and Network Advisory Board member Massad Ayoob in a discussion of verbal warnings within the context of a self-defense incident.

eJournal: Members have asked whether they have any duty to give verbal warnings during use of force in self defense, and how to balance that against any tactical disadvantage suffered by giving away one's position or other factors like revealing possession of a firearm. It is a difficult question from a legalities viewpoint, because there simply is not statutory law speaking to any such requirement.

Ayoob: I don't think you are going to find anything in the case law, either, nor in the instructions to the jury. It is going to come under the totality of the circumstances. Don't blame me for that buzz phrase—it comes from the courts. The courts judge things within the totality of what the situation was. Even in a non-retreat requirements state, they are going to ask, "Did you keep the ball rolling? Could you have stopped this and choose not to or were too stupid to?"

If it comes out, perhaps, that verbal warnings might have been practical and could have been done in time, it may be an issue. Usually it is not. Usually, once the shooting starts, things have broken so fast that you really can't find the time to give the guy Hamlet's soliloquy.

eJournal: Acknowledging that we are not bound by statutory law to give warnings along the lines of, "I've got a gun, don't come any closer," when you say "it might

come up," in what context would failing to give a warning create problems?

Ayoob: The family of the deceased sues you after you shoot the home invader. We have all seen these families go on TV after a shooting, saying, "My dear Sonny can do no wrong." "Sonny didn't have a weapon, they must have planted it on him because police have been planting weapons on Sonny since he was a juvenile," and "Sonny was just turning his life around before you gunned him down."

The same people who will say, "Why didn't you just shoot the gun out of his hand?" or "Why didn't you shoot him in the leg?" will also say, "Why didn't you just give him a chance? Why didn't you warn him?"

The answer, of course, is, "A chance to do what? He was obviously going to kill me, and when that became apparent, no, I didn't give him another chance to kill me."

eJournal: Does this accusation arise during civil litigation?

Ayoob: I think you will see it more in civil than you will in criminal, but it could come up in either one.

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eJournal: In any of the cases in which you served as an expert witness, have you had to counter accusations that your client didn't give the criminal a chance or didn't warn that he was armed?

Ayoob: Goodness, yes, it came up in 2012, in *Tennessee v. Shawn Armstrong*. Shawn was an estranged, battered wife, the husband had been stalking her, divorce was in process. She had gone target shooting on her family's informal range on her family's property. The husband got wind of where she might be and went out there and slashed her tires so she couldn't escape. When she came down the hill from the shooting range, he confronted her and began beating her and stomping her.

She was carrying a gun, and curled up so he couldn't get the gun. He left her lying there in a fetal position. She starts to rise to her feet, and as he walks back to his car, he stops, looks at her, and she sees in his eyes the resolution that he's coming back to do it some more. She draws the gun and before a warning can be issued, if I recall, he comes very rapidly toward her, and when he is about three seconds away, she sees the rage in his face and realizes the one beating apparently is not enough. She opened fire, shot and killed him.

eJournal: Was she still on the ground when she fired?

Ayoob: She was seated on the ground with her legs out in front of her, starting to push herself upright.

eJournal: But not mobile?

Ayoob: Not mobile, and would have had a hard time running because he'd kicked her, among other places, on the leg and she had a bad bruise on the leg. In any case, the prosecutor who, like those I talk about in classes, seemed to major in drama and minor in law, did a very histrionic speech and acted like Al Pacino in *The Humbling*, [changes voice to basso delivery with extra vibrato] "Sh-e-e didn't fire a warning shot; sh-e-e didn't shoot him in the leg; sh-e-e-e shot that man in his chest and put him in his gra-a-ave"—with about three syllables in grave. The simple fact was, we determined he was no more than three seconds away from her and there wasn't time to issue a warning, there wasn't time to have a dialogue and it was most unlikely that the dialogue would have done any good.

The ability, opportunity and jeopardy were clearly present. There was another man with him who had not yet joined in the assault but had stood back and watched the assault, so she had to keep him in mind, too. So we had the many elements: he is larger and stronger; he has already beaten her to the ground; the kick in the leg among other things impaired her mobility; she is seated, he is standing; he had the force of numbers; and she knew he had had Army Ranger training and was highly competent in unarmed combat.

We got those points across to the jury, and they got it. Part of my job was to explain there was no time for warnings or warning shots or a shot to wound. The jury got that. Within half an hour, we had the acquittal. So, yes, it does come up.

eJournal: Do you get involved in civil litigation much or are you primarily called when someone is charged with a crime?

Ayoob: It is about 50-50.

eJournal: How does this issue play out in a civil complaint?

Ayoob: There's one we're doing now. It began as a "knock and talk" and the subject, when he comes to the door, instantly comes at the police with a weapon that is already in his hand. The other side is making a huge issue of, "Why didn't you pound on his door screaming, 'Police, Police!'" The rationale, of course, is that they were not serving a warrant, it is a knock and talk for gathering information and you don't do things at that particular hour that will wake the neighborhood that could appear embarrassing to the individual who's door you're knocking on. That will be decided this year later in court.

Yes, the lack of a so-called warning and announcement in that situation has become an issue.

eJournal: Outside of your own case files, are you aware of not giving verbal warnings before shooting being an issue in civil claims for damages or should we be more concerned about not doing so adversely influencing a jury in a criminal case?

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Ayoob: I think that is the least of your concerns. When I say “totality of the circumstances,” it sounds like I am weaseling my way out of the question, but for example, maybe you think you’ve got someone in the house. If you end up having to shoot him when he kicks down the bedroom door, I would certainly expect plaintiff’s counsel to say, “Well, my poor, misguided deceased client probably would have turned and run if they had just shouted, ‘Get out, I have a gun.’”

And what our side will say, is “Look, your poor, misguided deceased client had broken into these peoples’ home, they had every reason to be in fear for their lives, and if he’d had a gun and they’d screamed, ‘I’ve got a gun’ and gave away their position, he could have started shooting through the door.”

There is always going to be that tactical balance and the individual has to assess the situation and then decide, “Do I want to attempt a verbal warning now or not?”

eJournal: How much of our brain power should we tie up on deciding what to say, when perhaps, as in the case of the battered woman you defended, concentration should be focusing on the “front sight and smooth press” of the trigger?

Ayoob: By the time you are concentrating on front sight-smooth press, the decision to shoot has been made. I don’t see a whole lot of point in trying to talk and shoot. What we have found is that if there is time to issue a warning, it makes it much, much clearer to every one including the eyewitnesses and the ear witnesses who the innocent person is.

Case in point, without mentioning names, we both remember a couple I taught here at Firearms Academy of Seattle many years ago. On a Thursday night, a night when both of them were always out of the house, the wife came home and it was dark, her husband’s car was not in the driveway, but the lights were on inside the house. She gets out of her car. She sees someone moving inside the house, and says to herself, “Let’s see, he doesn’t look like my husband, he’s shorter than my husband, he has a different complexion than my husband, that is not my husband!” Eye contact is made and before she can do anything insofar as calling for help on a cell phone or getting back into the car to drive away, he comes out of the house toward her.

He is carrying a bag of obviously stolen goods, and she knows there are firearms in the house that he has had access to, and she presumes he’s armed with one. She did exactly what we’d taught: she drew her pistol, she covered him, she shouted, “Don’t move!” and while there were no eyewitnesses, many neighbors heard the “Don’t move!” Her second command, if I recall correctly, was what we taught, “Don’t touch that weapon!” So in an instant, every ear witness knows, our female neighbor is facing someone with a weapon.

As he came toward her, she fired; he came toward her again, she fired again. Both shots struck home and the second proved fatal. It never even went in front of the grand jury; the detectives determined it to be a justifiable homicide and so reported it to the DA’s office and the matter was done.

I think in that case, having had time to give the appropriate commands made it clear to the witnesses, clear to the investigators, clear to everyone in the aftermath, who was who. The guy turned out to have a long, serious criminal record, had been burgling the home and had a bag full of stolen goods, and was foolish enough to continue assaultive behavior and died of his own misadventure as a result. I think certainly her use of the appropriate commands helped subsequently make that clear to the investigators.

eJournal: That story actually introduces the first two of the command sequence you teach. It seems to me that you’re teaching an appropriate script for specific circumstances.

Ayoob: Very much so. I think you should use prepared scripted commands for taking people at gunpoint with appropriate branching as the situation demands. I think you should do the same at any emergency scene, including an immediate post-shooting scene, where you have to galvanize onlookers into action because you can’t handle everything yourself—instructing someone to call police and an ambulance, for example.

The initial command sequence that I teach begins with “Don’t move!” when the suspect is at gun point, followed by “Drop that weapon!” if, let’s say, they’re holding a knife, or “Don’t touch that weapon,” if the weapon is in their belt or you’re not certain that they don’t have a

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weapon. The reason is, when it's happening, you've got too much on your plate to be asking yourself, "Let's see, what should I say?"

Where you absolutely do NOT, in my opinion, want a tape loop is in the aftermath. Maybe ten years ago, if the cops got to the scene and you said, "I was in fear for my life," that would have been useful. Today, that advice has become so clichéd, that when a cop hears, [speaks mechanically] "I was in fear for my life," the first thing that goes through their mind is, "Oh, great! Somebody killed somebody and had a script for what they were going to say to me." Instantly, the credibility goes down the chute. So, while we give a checklist of certain things students need to establish with the responding and investigating officers as soon as possible, we tell them they need to do that in their own words based upon the circumstances.

Where you absolutely DO want memorized, scripted commands is taking someone at gun point and galvanizing assistance in the wake of any crisis, whether that is a car crash, a medical emergency or a situation where you've had to shoot someone in self defense.

eJournal: You got us to "Don't touch that weapon!" If the assailant is compliant, what happens next?

Ayoob: It is going to depend. I tell my students, you are going to have to use your life experience in reading people. If this guy is just glaring at you with absolute hate and foaming at the mouth and vibrating with energy and you are barely in control, I would leave it there. You have the option of telling him, "Go, go away, get out of here." Of course, cops don't have that option; private citizens do. If it is someone that has been a consistent problem, the stalker, for example, this is probably the best chance you have to get him under control, so I would want to keep him at gunpoint until police have arrived. It is going to depend on the situation, it is going to depend on your reading of the suspect.

That is one of the cardinal differences between cops and civilians. Marty and I have a lot of years between us as cops, and if one of us on duty had taken a criminal suspect at gun point, then ordered him to run away, we would have been fired for cowardice and misfeasance of duty. The private citizen has no such duty. For them, it is

often the easiest, simplest way to mitigate the likelihood of a confrontation.

eJournal: Many of the questions about verbal warnings indeed come from a lack of clarity about the differences between the duties of sworn law enforcement and the responsibilities of good citizens. Face it, to some degree, we are all "trained" by television. Since most if not all legal deadly force uses portrayed on TV entail police giving verbal commands first, the viewer gets that sequence stuck in their head: give commands before you shoot. They confuse entertainment with the law.

Ayoob: I am not aware of any law that requires a verbal statement. Certainly, if it can be made as in the case of our graduate, it is good if you can. That said, you don't have to be babbling as you're shooting. From Ray Chapman to John Farnam, in the old days the advice was, "If you're going to run, run. If you're going to shoot, shoot." Yet Ray Chapman was the guy who came up with what is probably the most effective technique for shooting while you're moving, held and to my knowledge still holds posthumously the record on the Mexican Defense Course, which involves shooting and moving, and he recognized that sometimes you can't do the ideal thing, so therefore you'd better find a pretty good, effective way to do the less-than-ideal thing if you have to and be skilled at it. I think Chapman, in that respect, was the living embodiment of that principle.

eJournal: If we apply his inspirational example to this question, perhaps we'd better be prepared to talk if we need to talk, but recognize that shooting may need to follow close on the heels of the warning. But realistically, there are so many hazards a Network member may face, ranging from being robbed in public to the example you used earlier of a violent home invasion. Does location change what we need to verbalize?

Ayoob: Let's say you're a couple of doors down at the corner and as you come around the corner, you see a man beating a woman. My reaction would be to maintain a cover position, with my hand on my gun where he couldn't see it, and shout, "Stop! Step away from that woman." Now if he raises his hand and in it is a badge and he says, "NYPD Vice. I'm arresting this woman," it's going to be one of those moments I'm really glad I did

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not whip out my gun on him. If we don't know who is who, we can't go with stereotypes.

We all figure if we come along and see some big guy beating on some little guy, it is the stereotype of the bully and we are going to be the hero. We have to remember the big guy may be the innocent victim who just knocked the knife out of the shorter mugger's hand and is trying to keep him from picking it back up from the ground. If we do not know to a certainty, we should not be pulling triggers or even waving guns.

eJournal: In some ways it is a simple subject; in some ways it gets pretty complex. We've seen a variety of training methods over the years to accustom students to giving verbal commands at gunpoint. I remember one of your drills, back in New Hampshire many years ago, where you played a very long recorded lecture while we, the students, held a target at gun point and interacted verbally with an imagined assailant.

Ayoob: When that gun comes out, the more time you're trained with it, including giving thought that you might be holding someone at gun point and you're going to have to be multi-tasking, the better. You're going to have to be reading a changing situation, what the Supreme Court has recognized as a rapidly evolving set of circumstances, and you're not going to be able to keep conscious focus on, "Oh, yeah, my finger is supposed to be up in register on the frame." You have to have made that second nature.

There are going to be a whole lot of situations where it is going to be better for all of us if it's resolved verbally, not ballistically. We have to remember that the gun is not

the only choice that we have. It would be good if people worked force-on-force role-play enough and practiced their command sequence the way they practice drawing their gun. Practicing martial arts is fun, practicing drawing and shooting is fun; yelling at people for most of us is not fun. It is something that we have to have practiced and have to have nailed down.

I've found particularly doing it in a strong command voice probably keeps things from escalating. In my case, I've had a significant number of people at gunpoint and have never had to shoot a one of them. All have either submitted or fled right there. That is a whole lot easier than having to go through that number of shooting trials or excessive use of force trials.

eJournal: Likewise, I am sure that a good number of your graduates have also been spared post shooting trauma and legal aftermath by being able to control a budding threat through strong verbal commands. We've been so very fortunate to be able to learn these skills from you! I appreciate you teaching us threat management instead of just shooting.

Learn more about Massad Ayoob's classes, expert witness services and more at <http://massadayoobgroup.com/who/>. In addition, he blogs regularly at <http://backwoodshome.com/blogs/MassadAyoob/>.

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Marijuana and Armed Citizens

by N. Brian Hallaq, Esq.

In 2012, the states of Washington and Colorado began an experiment in legalizing marijuana use for recreational purposes. Alaska, Oregon, and the District of Columbia have

passed similar measures. Other states have either decriminalized small amounts of marijuana or have medical marijuana available through a doctor. All together more than half of the states have some form of marijuana available to their citizens.

For years, reputable firearms instructors have always preached that “guns and grass don’t mix,” but today some people view marijuana the way that most of society views alcohol. The fact is that the federal government does not recognize any state form of legalized marijuana. Understanding this dichotomy is important for armed citizens because the casual nature of marijuana use in many parts of the country has given rise to the attitude that an otherwise responsible law abiding citizen cannot get into trouble by possessing or using marijuana.

Every armed citizen recognizes, at least on an abstract level, that the possibility exists that they may have to use a firearm to defend themselves and their family. Having said that, if you keep a firearm for personal protection, and use it while possessing marijuana, you may escape criminal liability on a state level, but you may face prosecution in federal court for “use of a firearm during the commission of a drug offense.”

This may sound implausible, but several such prosecutions have already taken place in Washington State. In one case, two masked intruders broke into a luxury home and threatened the life of the 35-year-old homeowner and his nine-year-old son. The homeowner shot and killed both intruders. The homeowner was growing marijuana as part of his “co-op” that provides medical marijuana for other members of the “co-op.” The local prosecutor found that the homeowner acted in self defense and he was not prosecuted for shooting the intruders.

Four months later, the homeowner was charged by the United States Attorney for 1) manufacturing marijuana, 2) carrying a firearm during and in relation to a drug trafficking crime, and 3) possession of a firearm during and in relation to a drug trafficking crime. The homeowner was sentenced to 84 months in federal prison (60 months were solely for the firearms related charge) with another 36 months of supervised probation upon release.

About six months later, in a very similar case in Washington State, a homeowner shot at a home invader. The home invader was a felon in possession of a firearm, who was on probation at the time of the home invasion. As far as the State of Washington was concerned, there was no question that this was an appropriate use of deadly force in defense of the home owner and his family. The homeowner was charged with “carrying and discharging a firearm during and in relation to a drug trafficking crime.” The homeowner was sentenced to 32 months.

Prosecutions like these are not anomalies. The reason that these armed citizens were charged is because under the federal statutes, the term “trafficking” has a specific meaning, one that is substantially different than the term’s common usage. A person commits the crime of drug trafficking when manufacturing, distributing, dispensing, or possessing with the intent to manufacture, distribute, or dispense any amount of a prohibited narcotic. In other words, under the federal sentencing guidelines, the term “trafficking” is one that applies to situations that many people might view as possession. (21 U.S.C. section 841). In fact, there is a common myth that only large amounts of narcotics qualify for federal prosecution, but for these prosecutions any amount would qualify. (21 U.S.C. 841(b)(1)(D)).

Everyone remembers the plague of violence that engulfed Southern Florida during the heyday of cocaine trafficking in the 1980s. These laws were designed to add significant sentences to drug traffickers that were caught with firearms. Today, these laws are being applied to people involved in the burgeoning marijuana culture. (18 U.S.C. Section 924(c)). In fact, you do not need to even shoot the firearm. Brandishing the firearm while possessing marijuana can result in a sentence of

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seven years (18 U.S.C. Section 924(c)(1)(A)(ii). If the firearm is discharged the sentence can be ten years. (18 U.S.C. Section 924(c)(1)(A)(iii). If the firearm qualifies as a "semi-automatic assault weapon" the sentence can be ten years. (18 U.S.C. Section 924(c)(1)(B)(i).

While state and county prosecutors may find an armed citizen's use of a firearm in defense of his home an appropriate use of deadly force, the local U.S. Attorney has been given guidelines to prosecute any person whose possession of marijuana and firearms would fall under federal statutory prohibitions. This means that even if you were totally justified in using deadly force, you will still be charged and convicted of a federal crime.

As bad as the foregoing may sound, the problems widen when generally considering use or possession of a judgment-altering narcotic while engaging in deadly force.

First, it is recognized that use of narcotics or alcohol around firearms is fundamentally unsafe. As such, using a firearm while "under the influence" may be per se negligence. In fact, many states have zero tolerance rules as far as alcohol and drug use are concerned with the possession of a firearm.

A prosecutor may argue that your use of deadly force was "accidental" or "reckless" rather than "intentional" and your use or possession of marijuana may go a long way towards proving your actions were negligent or reckless. This would leave you open to a charge of manslaughter or another crime based on a theory of negligence or reckless behavior.

Second, marijuana is generally associated with a criminal subculture. While those attitudes may change over time, such evidence could give a jury the wrong impression about your judgment at the time of the incident.

Third, a well-known side effect of marijuana is paranoia. Here again, a prosecutor may make effective use of this

idea to establish that your decision to use deadly force was less related to a reasonable fear of grave bodily injury or death, and more related to the fact that your judgment was altered by your use of marijuana.

It seems clear that many state legislatures are waiting to see what the outcome of legalizing marijuana has been in Washington, Colorado, Alaska, and Oregon. If they are tempted by the possibility of increased tax revenues from the sale of marijuana, it seems clear that the trend will be towards legalization. Until the federal government legalizes marijuana, armed citizens should be aware that they will always be subject to federal prosecution for keeping firearms and marijuana.

Even if the federal government legalizes marijuana, armed citizens should be prudent in their use of any narcotic (or even alcohol for that matter) when putting themselves in a position to protect their families with a firearm. The general rule of thumb should be that you are not under the influence of any narcotic or alcohol when you are carrying a firearm in public. I would even argue that when at home, much the same way that we have "designated drivers," someone in the home, for whom protection of the family is entrusted, ought to skip the alcohol (or recreational narcotics in jurisdictions where it is legal) if they are responsible for the defense of the home with a firearm.

The bottom line is that regardless of the trend towards legalization the intelligent person will pick one lifestyle: legal marijuana user or armed citizen. Any other course of action is inviting trouble.

About the author: In addition to his work as an attorney, Brian Hallaq operates the Norpoint Shooting Center in Arlington, WA and is an avid I.D.P.A. competitor. He is a graduate of Massad Ayoob's LFI I, LFI II, LFI III, as well as training with Chuck Taylor, Jim Cirillo, The Firearms Academy of Seattle, Inc., the Jacobe Group, John Farnam, Ken Hackathorn, Rob Pincus, Clyde Caceres, Insights Training Center and Magpul Dynamics.



President's Message

by Marty Hayes, J.D.

I admit I was struggling to come up with a topic to write about this month, and then all of a sudden, I got a phone call. Problem solved!

The phone call was from one of the Network's

Affiliated Instructors, Jay Okimoto, the director of Crosswalk Readiness, Tucson, Arizona. He was calling to invite me to speak at a gathering of over 200 people, many of them not necessarily gun owners but instead, self-reliant people, who live in and about rural Northern Arizona. Typically, I would not have the time to travel so far to such an event and at such relatively short notice, but as fate would have it, I will be attending Gunsite the prior week, and the Family Preparedness Training event, sponsored by Crosswalk Readiness and SHOTS Ranch to benefit Oath Keepers (<http://oathkeepers.org>), is being held just two hours away from Gunsite! So, not only am I accepting Jay's invitation, but I also wanted to invite the Network members who live in the area to come and check it out, listen to me talk about self-defense law and aftermath issues and take some other pretty cool training seminars.

Here are the details (followed by contact info):

Dates: October 2-4, 2015

Place: SHOTS Ranch, Kingman, AZ

Training Offered:

- Legalities of Use of Deadly Force in Self Defense
- AZ CCW Certification
- Small Game Harvesting
- SPOT Trace SAT Coms
- Intro to Force Multiplier Tactics
- Defensive Shotgun 1
- Prepping Bulk Wood and Chainsaws
- Defensive Carbine 1
- Art of Survival/Self Reliance
- Intro to FRS/GMRS/HAM Radios
- Intro to Criminal Deviancy/Awareness
- Homestead Construction Topics
- Greyman Sheepdog
- Intro to Pistol Combatives
- NRA RSO Certification
- New Gun Owner
- Austere Water Processing/Storage

- Intro to the Defensive Carbine
- EMP and Electronics Protection
- Intro to Bushcraft Skills
- Portable Generators and Electricity
- Intro to TCCC
- Intro to Low Light Pistol
- Intro to Urban Survival
- Prepping with Propane
- SHTF Human Corpse Issues
- Defensive Pistol II
- Intro to Welding
- Intro to Land Nav/Orientating
- Defensive Hunting Rifle

Is there anything on the above list you would like training in? I see a whole bunch of non-firearms related classes that I will be looking into attending while I am there. Especially that Intro to Welding, as welding is something I have wanted to learn for a lifetime.

So, how much does this cost? According to Mr. Okimoto, not much. Volunteers with a passion for the subject matter are offering most of the instruction, and due to the generosity of corporate sponsors, the class fees of \$3-10 will mainly simply cover the cost of supplies. I think it is affordable!

About the Venue: SHOTS Ranch is a 1300-acre privately owned training facility that specializes in self-reliance skill-set development and instruction. They are located on the east side of the Cottonwood Mountain Range at an average elevation of 5400 feet, approximately 42 miles west of Kingman, AZ, approximately two hours from Las Vegas and three hours from Phoenix. Check them out on the web at <http://www.shotsranch.com>.

How do you get more information? The details of the event are being finalized as you read this, so if you are interested, simply drop Mr. Okimoto an e-mail and he will send you all the details when they are finalized. His e-mail address is info@crosswalkreadiness.com.

In closing, I would like to comment that I am very impressed with what Mr. Okimoto and SHOTS Ranch have put together and I really look forward to participating. Our gun culture needs more of this outreach, so watch for my report in an upcoming *eJournal*.

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Please enjoy the next article.]*

September 2015



Attorney Question of the Month

Use of deadly force in defense of others is the topic we are currently discussing with our Affiliated Attorneys. Here is the question under discussion—

Under your state's law may someone (not personally threatened with deadly force) use deadly force to stop the in-progress and/or imminent commission of certain crimes? What crimes? Must the crime actually be occurring or imminent, or would deadly force be lawful if the intervenor only believed that one of such crimes was occurring or was imminent?

So many affiliated attorneys responded that we needed three installments to present all of their commentary. This is the third and final installment.

Robert S. Appood

Carpelaw PLLC

2400 NW 80th St., #130, Seattle, WA 98117-4449

206-624-2379

rob@carpelaw.com

The lawful use of force in Washington State is governed primarily by three statutes: RCW 9A.16.040, which regulates use of a deadly weapon by a public officer, peace officer, or person aiding a public officer or peace officer, RCW 9A.16.020 and 9A.16.050, which regulate the lawful use of force by a civilian. For the purposes of this month's question, I will focus only on the latter two. RCW 9A.16.020 provides:

The use, attempt, or offer to use force upon or toward the person of another is not unlawful in the following cases:

- (1) Whenever necessarily used by a public officer in the performance of a legal duty, or a person assisting the officer and acting under the officer's direction;
- (2) Whenever necessarily used by a person arresting one who has committed a felony and delivering him or her to a public officer competent to receive him or her into custody;
- (3) Whenever used by a party about to be injured, or by another lawfully aiding him or her, in preventing or attempting to prevent an offense against his or her person, or a malicious trespass, or other malicious interference with real or personal property lawfully in his or her possession, in case the force is not more than is necessary;
- (4) Whenever reasonably used by a person to detain someone who enters or remains unlawfully in a building or on real property lawfully in the possession of such

person, so long as such detention is reasonable in duration and manner to investigate the reason for the detained person's presence on the premises, and so long as the premises in question did not reasonably appear to be intended to be open to members of the public;

- (5) Whenever used by a carrier of passengers or the carrier's authorized agent or servant, or other person assisting them at their request in expelling from a carriage, railway car, vessel, or other vehicle, a passenger who refuses to obey a lawful and reasonable regulation prescribed for the conduct of passengers, if such vehicle has first been stopped and the force used is not more than is necessary to expel the offender with reasonable regard to the offender's personal safety;
- (6) Whenever used by any person to prevent a mentally ill, mentally incompetent, or mentally disabled person from committing an act dangerous to any person, or in enforcing necessary restraint for the protection or restoration to health of the person, during such period only as is necessary to obtain legal authority for the restraint or custody of the person.

The curious language in the statute is the preamble "is not unlawful when..." The statute doesn't really say that the conduct described is "lawful." Rather, it treats the enumerated situations in the negative, possibly implying that the use of force is generally "unlawful" except in the very specific circumstances described in the statute. With that caution in mind, let's look at the list and examine each exception.

"(1) Whenever necessarily used by a public officer in the performance of a legal duty, or a person assisting the officer and acting under the officer's direction." This exception is fairly self-explanatory, and echoes a similar provision in RCW 9A.16.040. If it's a cop, or a cop asks a civilian for assistance, the use of force is permitted.

"(2) Whenever necessarily used by a person arresting one who has committed a felony and delivering him or her to a public officer competent to receive him or her into custody." This exception starts to get a bit more interesting. Basically, the exception says that you, a civilian, have the right to use force when making a citizen's arrest of someone who has committed a felony. However, the exception places a limited license on that

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use of force and permits it only when you are delivering the arrested individual to a public officer.

“(3) Whenever used by a party about to be injured, or by another lawfully aiding him or her, in preventing or attempting to prevent an offense against his or her person, or a malicious trespass, or other malicious interference with real or personal property lawfully in his or her possession, in case the force is not more than is necessary.”

In this scenario, if you are about to be hurt by someone, or someone else is about to be injured by someone and you are coming to that person's aid, you may use only that amount of force as is necessary to prevent that harm. Similarly, if someone is about to commit a malicious trespass (“malicious” means with an evil intent) or a malicious interference with land or personal property in your possession, you may use only the amount of force necessary to prevent that trespass or harm. The important factor here is that the land or personal property must be in your possession. The statute apparently does not allow you to use force to protect someone else's land or personal property.

“(4) Whenever reasonably used by a person to detain someone who enters or remains unlawfully in a building or on real property lawfully in the possession of such person, so long as such detention is reasonable in duration and manner to investigate the reason for the detained person's presence on the premises, and so long as the premises in question did not reasonably appear to be intended to be open to members of the public...”

Similar to exception number three, if you are in lawful possession of a building or land, and someone unlawfully enters into that building or upon that land, you may use force to detain that person, but only for so long as is reasonable, and only in a manner that allows you to determine why that person entered the building or upon the land. Also, it must be apparent to a reasonable person that the building or land was not generally open to the public. A private residence is not generally open to the public, nor is a warehouse or other secure storage facility, and a reasonable person would not believe that they were. On the other hand, a store or restaurant, or even a private park that charges admission to allow members of the public to use it, would likely be considered open to the general public and force could not be used to detain someone who enters there.

“(5) Whenever used by a carrier of passengers or the

carrier's authorized agent or servant, or other person assisting them at their request in expelling from a carriage, railway car, vessel, or other vehicle, a passenger who refuses to obey a lawful and reasonable regulation prescribed for the conduct of passengers, if such vehicle has first been stopped and the force used is not more than is necessary to expel the offender with reasonable regard to the offender's personal safety;”

This type of provision is common in the laws of many states and harkens back to the common law that came into being back in the days when trains were the primary mode of transportation for moving people over great distances. It continues as good law because it is applicable to bus and light rail transportation, and continues to be applicable to boats, as it was in eras gone by. Essentially, it says that if someone is being rowdy or threatening on a train or bus or similar transportation, the carrier may use that amount of force necessary to eject the hooligan from the train, bus or boat. However, the force used may not put the hooligan's safety in jeopardy (“Get off the boat! Now!”). Of note, the carrier may enlist the aid of other passengers to effect the ejection.

“(6) Whenever used by any person to prevent a mentally ill, mentally incompetent, or mentally disabled person from committing an act dangerous to any person, or in enforcing necessary restraint for the protection or restoration to health of the person, during such period only as is necessary to obtain legal authority for the restraint or custody of the person.” This, also, is quite similar to number 3. However, it is specifically aimed at preventing mentally ill, mentally incompetent, and mentally disabled persons from injuring anyone (including themselves). It also extends the privilege to those who seek to impose restraints on the mentally infirm. These rights may be exercised only for as long as it takes, and only to the degree necessary, until legal authority is obtained to restrain the mentally infirm person.”

Now comes the really interesting law. RCW 9A.16.050 informs us: “Homicide is justifiable when committed either:

(1) In the lawful defense of the slayer, or his or her husband, wife, parent, child, brother, or sister, or of any other person in his or her presence or company, when there is reasonable ground to apprehend a design on the part of the person slain to commit a felony or to do some great personal injury to the slayer or to any such person, and there is imminent danger of such design

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being accomplished; or (2) In the actual resistance of an attempt to commit a felony upon the slayer, in his or her presence, or upon or in a dwelling, or other place of abode, in which he or she is.”

This law says that if you, your husband, wife, parent, child, brother, or sister, or anyone in your presence, is threatened with a great personal injury, or even if you reasonably believe that someone intends to commit a great personal injury on one of you, and you believe that one of you is in imminent danger of that great personal harm, it is lawful to kill that person. Moreover, if you reasonably believe that the wrongdoer intends to commit a felony and that there is imminent danger that the felony is about to be committed, or the wrongdoer commits a felony in your presence, or upon or in your home, and you are there at the time, you can kill him. Yep. That’s what the law says. In actual practice, if you blow away someone committing a felony that isn’t going to injure you or yours (such as selling narcotics or stealing your car), you’re likely going to face some pretty uncomfortable consequences.

Michael W. Maurizio

Maurizio & Sharpe

PO Box 1849, 1508 W. Main St., Marion IL 62959

618-998-1515

<http://www.mauriziolaw.com>

mmaurizio@mauriziolaw.com

This is the question presented broken down into sections and my responses:

Under your state's law may someone (not personally threatened with deadly force) use deadly force to stop the in-progress and/or imminent commission of certain crimes? Yes they can.

What crimes? Any crime that involves the use of unlawful force. However the force used during the intervention must not be in excess.

Must the crime actually be occurring or imminent, or would deadly force be lawful if the intervenor only believed that one of such crimes was occurring or was imminent? See the elements of defense listed below. In short, my opinion is that the unlawful force must be in process, actual battery or assault with ability to fulfill that threat, at the time of the intervention by a third person.

In Illinois, this is covered by statute. I have provided a copy of this statute:

720 ILCS 5/7-1

Formerly cited as IL ST CH 38 ¶ 7-1

5/7-1. Use of force in defense of person

§ 7-1. Use of force in defense of person.

- (a) A person is justified in the use of force against another when and to the extent that he reasonably believes that such conduct is necessary to defend himself or another against such other's imminent use of unlawful force. However, he is justified in the use of force which is intended or likely to cause death or great bodily harm only if he reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or another, or the commission of a forcible felony.
- (b) In no case shall any act involving the use of force justified under this Section give rise to any claim or liability brought by or on behalf of any person acting within the definition of "aggressor" set forth in Section 7-4 of this Article, or the estate, spouse, or other family member of such a person, against the person or estate of the person using such justified force, unless the use of force involves willful or wanton misconduct.

As stated in the statute, a person is justified to use the appropriate force in defense of themselves or others that is being used against them or another. If there is a prosecution of a person for acting pursuant to this statute, it is an affirmative defense that must be pled and the State must overcome that defense during the prosecution.

Elements of defense of self defense are that force is threatened against a person, that person threatened is not aggressor, that danger of harm is imminent, that force threatened is unlawful, that the person threatened must actually believe that danger exists and that use of force is necessary to avert danger and that the kind and amount of force which he uses is necessary, and that the above beliefs are reasonable; a further principle involved when a defendant uses deadly force limits use of deadly force to those situations in which threatened force will cause death or great bodily harm or the force threatened is a forcible felony.

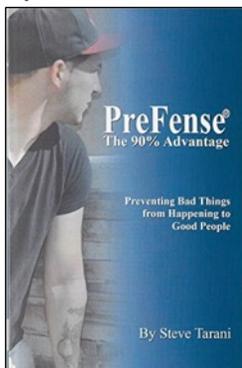
I hope this accurately addresses your question.

We extend a heartfelt "Thank you!" to all of the Network Affiliated Attorneys who responded to this question. Please return next month when we introduce a new topic.

Book Review

PreFense® The 90% Advantage: Preventing bad things from happening to good people!

287 pages, paperback, illustrated
 Tarani Press; 2nd edition (2014)
 ISBN 978-0615962368
 Amazon.com price \$19.95



Reviewed by Gila Hayes

Why do we invest so much into learning how to defend against aggression but so little on prevention? This is the challenge with which author Steve Tarani starts his book *PreFense*®. “Instead of spending so much time and effort planning a *response* to an incident why not expend the same preparatory resources to *avoid* those situations in the first place?” he asks.

Tarani’s viewpoint, encompassing security issues he addressed during 25 years with United States defense, intelligence and law enforcement agencies, is much wider than most. Struck by how little people know about threat avoidance, while a government contractor Tarani volunteered to develop programs he called “proactive protection” for people in high-threat situations. In his book’s introductory pages, he writes that he was so drawn to this mission that he eventually abandoned the security of federal employment and set to work distilling forty years of training and experience into a system he called Preventative Defense, or PreFense®.

Tarani posits that because Americans generally go about their day-to-day pursuits without falling prey to violence, we are conditioned to expect to live free of threats. That, however, is not true for 32.4% of the population, he cites, asking, “Instead of being blindsided and forced to react to these incidents, what if you could see them coming and prevent them from happening?”

Top security professionals habitually maintain an “assessment and response” thought pattern, Tarani explains, suggesting that a private citizen can adopt the same habits to avoid predators. He extensively cites Col. John Boyd’s Observe, Orient, Decide and Act cycle, adding, “the more you know, the better decisions you can make in a shorter period of time.”

Despite a common theme in victim statements, violent crime doesn’t happen “out of the blue,” Tarani continues.

Human predation follows specific steps. He explains, “All bad guys ranging from schoolyard bully to purse snatcher to international terrorist follow this same cycle in planning for a successful attack.” During the first three steps in which the predator looks for the right victim, your options are unlimited, he asserts, but after the assailant chooses you, closes the distance and attacks, you are limited to run, fight or submit. “You can do many things that will cause an adversary or predator who may be considering attacking you, your family, home or property to lose interest and go target someone else,” he encourages.

It is important to make realistic threat assessments to put resources to best use and the first step is to anticipate and avoid the hazard through good planning, Tarani urges. Predators are vulnerable to detection while seeking and selecting victims. If something just doesn’t “feel right,” he illustrates, and the person moves when you move, avoids eye contact with you or “otherwise starts acting funny around you it is possible that they may be evaluating you,” he teaches.

Victims often agonize about why they were attacked. Tarani turns that instinctive query toward identifying and stopping victim behavior that attracts predators. Bad guys go for the soft targets, he explains, citing the famous prisoner study on victim selection that identified appearances that indicated overall unawareness as the primary attraction, although weakness, exposure or easy accessibility are factors, too, he adds. Still, simply removing soft target indicators doesn’t eliminate danger from a more sophisticated offender who creates opportunities to attack. Tarani gives illustrations of stopping the cycle early, despite having caught the predator’s attention. Even during the stalking stage, the victim is able to stop the cycle, he teaches.

In a chapter entitled *Defensive Principles*, Tarani explains the reactionary gap, and the idea that at conversational distances, any defensive tactic requiring more than two seconds to execute is unlikely to succeed. Additionally, complex plans need to be broken into manageable steps like get to the door, get down the stairs, get to the car, he illustrates. If nothing else, simply move off the line of attack to mitigate the fact that action beats reaction. Don’t just stand on the “X,” Tarani writes over and over.

PreFense® is nearly to its halfway point before discussing weapons for self defense and in the chapter

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entitled *Physical Protection Tools*, weapons are prioritized below communications, illumination, navigation, tools carried to support your mobility (knives, multi-tools and a go-bag to hold it all) and warning devices (alarms). This is not a “guns for self defense” book—its scope is much broader. Tarani emphasizes that the true weapon is the mind and anything else is a tool.

“You have a wide range of hand-held weapons available to support your existing knowledge and skill in stopping a physical attack,” Tarani writes. These fall into purpose-built and improvised. Mental preparation, legality, accessibility, carry and deployment are discussed for tools ranging from guns to TASER®s to knives to pepper spray and improvised items. Some are devised to gain the assailant’s compliance through pain, while others work through mechanical compliance. He warns, “From a protective viewpoint, to stake the outcome of a physical altercation on someone else’s level of pain tolerance is unsatisfactory.” Although *PreFense*® is not a gun book, he writes, “In a life-or-death defensive situation, a firearm operated by a qualified user is the most effective hand-held physical protection tool available to immediately stop a physical attack—bar none.”

PreFense® is broken into three segments: threat management, protection, and application of Tarani’s protective planning to real world situations. For example, he breaks active shooter incidents down to bare components: an occupied facility, a bad guy and his attack cycle. He discusses hardening soft targets (facilities *and* occupants), and interrupting the attack cycle in its early stages by recognizing patterns common to previous incidents. This is a complex and well-footnoted chapter.

Post-incident analyses of active shooter attacks allow identification and reporting before another attack starts. Tarani cites several school killings averted by applying this knowledge. He also relates incidents in which killers locked doors and set up barriers, noting that law enforcement responding to the Virginia Tech shooting lost time breaking through chained and locked doors, learning later that people had noticed the chains several days earlier, along with further warning signs but none were reported.

Solutions to active shooters need to be kept simple, “In fact the more complex the plan the less likely it would be followed under duress,” Tarani explains. Create distance as safely as you can, he urges, and communicate with

others in the area and with authorities. Taking cover inside the facility or getting outside is analyzed, as are ways and times to counterattack.

In reading Tarani’s discussion of when and how to counterattack, I wondered how different shootings in the past few years would have been if victims had flung books, beverage cans and bottles, desks and chairs at the killers as distractions while the able-bodied rushed to subdue him. Instead of cowering, what if everyone present screamed, “Get him!” and acted accordingly? He later suggests that once an attack is underway—be that against a single victim or a group—it’s better to take even the wrong actions than to do nothing at all. “Making the wrong decision, you at least have taken action, and thus force your adversary to react, allowing you the opportunity to make a new plan at the very next moment,” he explains.

In subsequent chapters, Tarani applies *PreFense*® principles to preventing home invasions and to personal defense in public, starting with deterring, detecting and delaying the intruder. Interestingly, he debunks a strategy long taught in self-defense seminars to “turn the fear into rage.” I think this is one of the best examples of how Tarani’s book approaches the topic from such a different viewpoint than other armed self-defense training.

From the legal stand point we recognize the hazards of claiming rage or anger at the assailant you had to shoot, and Tarani makes another good point, writing, “The professional protection community recommends removing emotion from the process entirely. Simply detach yourself from any emotion. It is widely known that emotion takes up energy. Rather than waste one ounce of energy on how you ‘feel’ about something, which will in no way contribute to a desired outcome, simply unplug. Take that same amount of energy and instead of changing it to another emotion convert it to work effort. You have a very important job—a lifesaving mission.”

PreFense® was not easy reading, but Tarani’s insights underscore for me the value of studying a thoroughly-discussed problem—in this case, personal safety—from a different viewpoint. By analyzing safety challenges from the viewpoint of a protection specialist, Tarani has added many valuable insights to our ongoing self-defense instruction.

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



News from Our Affiliates

Compiled by Gila Hayes

August was a big month for distributing copies of our Foundation's booklet

What Every Gun Owner Needs to Know About Self-Defense Law to Network affiliates all across the country. It is always enjoyable when affiliates have a few minutes to share a little about their activities. Passing along details about their schools helps members know who is working in the various regions all across the nation, so in this column we try to excerpt a sampling of our affiliates' news. Since we heard from so many affiliates in August, this column will run long this month.

Lateif Dickerson, came into the Network in April of 2008 and is one of our earliest affiliated instructors. He is still going strong and giving Network materials to his students. Dickerson and his crew at New Jersey Firearms Academy teach not only introductory pistol classes, but have training for rifle and shotgun shooters, knife defense, Jujitsu-based self defense as well as first aid and CPR certifications, group shooting events, retired police officer qualifications and more. See <http://www.njfirearms.com/about/core-values>. In addition, Dickerson is frequently in the news, called on as an expert when a story deals with firearms issues.

Bob Houzenga and Andy Kemp were also among our earliest affiliates, and at that time, Kemp was still located in the Midwest, although he later migrated to Idaho so now their school, Midwest Training Group, teaches pistol, rifle and shotgun classes not only in Iowa, but also in North Idaho. Cash in on these lifetime instructors' skill and knowledge base and learn more about their classes at <http://midwesttraininggroup.net>.

Our affiliated instructor Ken Delahunt writes that he is starting to travel outside his home turf in New York City, taking the Network's booklet with him when he teaches in AZ, PA, CT, MA and VT. When we first got to know him, Ken was teaching exclusively at NYC's Westside Range, so it is great to hear that he's expanding. You can learn more about him and Contreforce Group, his training organization, at <http://www.contreforce.com/ken-delahunt/>

And speaking of getting around, one of our most widely-traveled affiliated instructors is Kevin Faherty of @ a Moment's Notice, based out of Portland, OR. He teaches in his home state of Oregon, but also travels to WA, ID, MT, IN, WI and WY where his full-service UT, AZ and FL carry license classes include the fingerprints and passport-type photos required with the applications (with the exception of FL, which requires prints taken by a law enforcement agency). Faherty even helps with copies of other documentation required for applications and he gives the students the envelope and postage to mail in their permit applications! It is hard to beat that level of service! Learn how to participate in one of his classes at <http://www.concealedsafetyclass.com>.

Our affiliated instructor Jim Trockman writes that he is now teaching private classroom and live fire instruction for first time handgun buyers at the Uncle Rudy's indoor range in Evansville, IN. Jim also blogs at <http://www.gunsitelinks.com>, so check there for more information about his training.

Joe Truesdale of One on One Firearms Training in Rocklin, CA has small group and private classes for Californians wanting to learn pistol, carbine or shotgun skills, as well as the training required for CA's CCW license and the UT's non-resident license, too. Joe recently asked for more of our Foundation's booklets *What Every Gun Owner Needs to Know About Self-Defense Law*, which he gives to students when he talks about Network membership benefits during classes.

Alecs Dean at International Firearm Safety, Inc. in Ft. Myers, FL has a full slate of classes coming up this fall. While many of Alecs' programs are NRA Instructor level certifications, he also has a combo American Heart Association CPR/AED, Bloodborne Pathogen, and Basic First Aid certification program running on Friday, Oct. 9th, that would be a great way to update on those vital skills. In addition, in September and October, Alecs is teaching a variety of NRA instructor courses. See <http://www.internationalfirearmsafety.com/contact.html>.

Mark Avery is our affiliated instructor at Sim Trainer in Dayton, OH, a facility teaching a wide variety of pistol courses, plus training in rifle or shotgun use. In addition to his concealed carry class, he offers a legal update, noting that Ohio's concealed and firearms-related law has changed a lot since OH passed concealed carry legislation in 2004. To help armed citizens in their area

[Continued next page...]

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stay up to date on the law, they bring in a municipal court judge to teach a concealed carry legal update in a four hour program scheduled each month. This is a great way to get a good update on changes to the law and it only costs \$50, so now there is no excuse for not knowing the nuances of current OH gun law. See <http://sim-trainer.com/civilian.php>.

Low light shooting skills are the topic of one of Network affiliated instructor Steve Eichelberger's popular firearms classes on several weekends in November. If you're in the Bend, OR area, don't miss the chance to hone this important skill under his tutelage. Check out his curriculum at http://www.firearmsinstructor.us/Live-Fire_Training.php.

John Duran, of Tactical Iron in Arvada, CO, focuses his pistol courses on helping concealed carry permit holders develop the skills they need, including "advanced skill sets often overlooked" in conventional training. To this effort, John brings 35 years as a martial artist and over 20 years experience as a self-defense instructor. He also offers training courses in knife combat, tactical tomahawk and urban/wilderness survival. Learn more at <http://tacticaliron.webs.com/advancedhandguncourse.htm>.

Frank Le Fevre at Saginaw Firearms in Saginaw, MN has a full slate of the NRA firearms classes, HR 218 qualifications for retired law enforcement officers, plus training required for the MN permit as well as WI and FL's permit training. He tells all his students why Network membership is so important. Le Fevre explains that he gets the most satisfaction out of introducing first-time shooters of all ages to gun safety and marksmanship skills. Check out his website at <http://www.saginawfirearms.com/home.html> to learn more about what he does.

Dirk Sanders of Defensive Strategies gave folks in the Wichita, KS area a great summer discount on his eight-hour Kansas Concealed Carry class, cutting tuition back to \$65, and that tuition includes range use, class materials, breakfast and lunch! Summer pricing remains in effect for his September 12th session, so I gotta ask, how could you beat that? Sanders teaches his programs on a range in Rose Hill, KS that features 180-degree angles of fire capability, reactive steel targets and more.

Sanders blogs on his <http://defensivestrategies.net> website that armed citizens in KS may fail to recognize the value of obtaining the KS state-issued concealed carry permit, since their state passed legislation allowing permit-less concealed carry—what is often referred to as Constitutional Carry. A state-issued permit, he notes, allows legally-armed Kansans inside the 1000-foot Federal Gun Free School zone, expedites firearm purchases and often increases reciprocity from other states, he accounts.

While an eight-hour CCH license class is just an introduction, Sanders explains that he packs in a lot of information to get armed citizens off to a good start and adds that at least his students will have recognized training on file should their use of force actions come under scrutiny by the criminal justice system. He makes a good argument for augmenting Constitutional Carry with voluntary training at <http://defensivestrategies.net/if-constitutional-concealed-carry-sb45-passes-why-would-i-need-a-concealed-carry-permit/>. It's good advice!

Stacy Alexander of Savvy Shooters in Southeast Washington State reaches out to women with the NRA *Women on Target* program, plus *NRA First Steps* and *NRA Basic Pistol* classes, in addition to shorter private and group lessons as well as a two-hour personal safety seminar that does not entail shooting. Stacy writes, "Working mainly with women, I want to make sure they have information at their fingertips so they can be aware of the self-defense laws," and we were happy to refresh her supply of *What Every Gun Owner Needs to Know About Self-Defense Law* for just that purpose.

Affiliates, please remember to let me know when you need more copies of the Armed Citizens' Educational Foundation's booklet and the Network's tri-fold brochures by calling 360-978-5200 or emailing me at ghayes@armedcitizensnetwork.org.

While you're at it, don't forget to send me an email if you have any special events like open houses, special classes or other interesting tidbits that we can announce for you in this column. About 60 days advance notice is best since we publish only once a month.

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



Editor's Notebook

by Gila Hayes

Recently, a Network member called to ask about holding private business owners who declare their property off limits to guns liable for failing to protect customers, as advocated in a gun magazine

he reads. Threatening to sue is a popular American tactic but I wonder if it is our most effective approach since it entails much outside our control. Is the threat a paper tiger? Just because we would like to mandate gun carry permissions at private businesses, does the legal remedy exist by which a judge would force a business owner or entity to meet our demands? If not, are we making empty threats?

While there is probably some truth to the axiom that in American anyone can sue anyone else for anything, it is a long and tortuous path between filing a lawsuit and receiving a judicial order for the business entity or owner to pay you damages if you get hurt by an attacker inside their place of business.

Do a web search on "lawsuit thrown out" or "lawsuit dismissed" to see how the courts keep from getting tied up with issues on which they cannot legitimately rule. How are you going to show that the business had a legal responsibility for your safety and is liable for the harm you suffered? It must be more that you BELIEVED they should be responsible because they said don't come in here with your gun or your suit is likely to be dismissed for failing to state a claim upon which relief may be granted.

Without doubt, many of the cases thrown out are frivolous like the one just last May in which the Nonhuman Rights Project (NRP) sought judicial agreement that chimps are people deserving human rights. Now, having said that, more serious lawsuits get tossed out, too, including any number of sexual harassment complaints, immigration questions, end of life issues, red light camera intrusions and a lot more.

Besides, do we really want to encourage even more intrusive state and federal laws? Conservative activists raised a ruckus when bakeries in CO and OR were punished for refusing to bake wedding cakes for same-sex couples. The litigants should just buy the cake

somewhere else, many urged. Has that fight made any friends for the LGBT community? Would laws compelling an antigun business owner to take down his "No Guns" sign and allow you or me inside while armed work any better?

Does my right to armed self protection apply even if I intrude where I am not welcome? The "No Guns Allowed" signs that anti-gunners press on private businesses make it clear that either by ignorance or due to personal prejudice, the storeowner does not want armed citizens to come inside! The "No Guns" signs pop up like weeds in the wake of concealed carry legislation, and I doubt we have seen the end of posted private premises. We clearly are not changing the hearts and minds of our enemies on this issue.

But are more laws the solution? In 2013, a Missouri legislator introduced legislation that "Specifies that private businesses that post signage prohibiting weapons on the premises is liable for injury or damage to public invitees, business visitors, and employees as a result of the prohibition." This pro-gun effort is nothing new, having been attempted as an amendment to Arizona law as far back as 2002, and similar legislation has been introduced elsewhere, too. The bills get hung up in committee, and that is as far as it usually goes.

How can we make a greater impact? Well-documented business boycotts, executed courteously but with clear communication, are hard to beat. Instead of threatening to sue if something horrible happens sometime out in the future, why not show the merchant an immediate loss—such as withholding our trade and commerce? In other words, "No Guns=No \$"

A goodly number of pro-gun websites have posted artwork for nice-looking business cards printed with just that message (see one great example at <http://www.learnnocarry.com/nogunsnomoney/>) so if the business owner won't speak with you, you can leave the message that you can't spend your hard-earned money with them and had to go spend your money elsewhere. Besides, do you really want to help an anti-gun business prosper so they can donate part of the money you paid them to the Coalition to Stop Gun Violence? I don't.

*[End of September 2015 eJournal.
Please return for our October edition.]*

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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 <http://www.armedcitizensnetwork.org/our-journal>. Content is copyrighted by the Armed Citizens' Legal Defense Network, Inc.

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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.

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

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Please write to us at info@armedcitizensnetwork.org or PO Box 400, Onalaska, WA 98570 or call us at 360-978-5200.



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