



Safety in Airports and Other Non-Permissive Environments

by Mike Wood

When the Fort Lauderdale Airport shooting

happened in January of this year, a lot of armed citizens began thinking about the best ways to deal with this kind of attack. As a frequent business traveler who spends a lot of time in airports myself, I was certainly one of them.

As lawfully-armed citizens, we frequently focus our attention on firearms when it comes to defensive preparations. Our firearms are certainly an essential part of our defensive plans, but our mental preparation and awareness are even more critical to our survival, particularly in a non-permissive environment like an airport, which may reduce or eliminate access to our guns.

With that in mind, here are some thoughts about how to improve your safety in an airport environment, or other similar areas.

Know the Terrain, Assess the Risks

From a security perspective, an airport is divided into two kinds of areas—the sterile and non-sterile areas. The sterile area is where access is controlled, such as the part of the passenger terminal that's inside of security screening, or the outdoor areas inside of fenced checkpoints, such as the aircraft ramp or baggage sorting stations. The non-sterile area is anywhere that access is uncontrolled, such as the passenger loading and unloading zone outside the terminal, baggage claim, the ticket counters, and the security queue.

While it's tempting for people to think about airports as "high security" environments, the truth is that there are vast differences between the security afforded in sterile and non-sterile areas. In the non-sterile areas, the public can come and go at will, and bring anything they want into the area with little fear of detection. For example, it's

easy to drive a car full of explosives right up to the curb (as an attacker planned to do at Los Angeles International Airport, on 1 January 2000, before he was caught at the Canadian border a few weeks prior to the attack), or walk into the ticketing or baggage claim areas with hidden weapons (as an attacker did at the El Al ticket counter at Los Angeles International Airport, in July 2002). The lack of a significant police presence in many non-sterile areas even permits an individual to penetrate far into the airport environment with openly-carried weapons, as we saw in the November 2013 Los Angeles International Airport attack, where the attacker shot his way past the security checkpoint with a rifle before he finally encountered the police.

The sterile areas are not immune from attack, but the likelihood of an armed attack is reduced because screening protocols make it more difficult (not impossible, just more difficult) to get a capable weapon inside. Additionally, the risk of detection is higher because fences, gates and checkpoints must first be breached, raising the possibility that the attacker will be caught or an alarm will be sounded.

This is not necessarily the deterrent that you might think it is, because an attacker can easily breach the boundary, penetrate into the environment, and hit the target before armed responders can confront him, even if an alarm is promptly initiated. For example, an attacker could sprint past unarmed exit lane monitors, quickly access the sterile area, and have minutes to attack before armed security confronted him. Similarly, attackers can easily crash a service gate or drive through a vehicle checkpoint without stopping, drive onto the ramp, and launch an attack on aircraft or the terminal before they are intercepted. If suitable uniforms, credentials, and marked vehicles are used (all easily obtainable through theft or forgery), then attackers may not be detected at all before they strike.

Additionally, if you've been paying attention to the news in the last months, you've seen some reporting that

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indicates an incredibly high failure rate for airport security screening. In one test at Minneapolis-St. Paul International Airport, screeners failed to detect 95% of the prohibited items that were carried through by federal agents posing as travelers, including drugs, weapons, and explosives.

So, it's important to fix this in your mind: While an attack within the sterile area is less likely than an attack in the non-sterile area, either is entirely possible. As a result, you need to maintain a good level of awareness when you're at the airport, no matter where you are. You don't get to relax and go into "Condition White" just because you're on the backside of TSA screening.

Borders and Transition Zones

It's especially important for you to have a high level of awareness when you approach "borders" and "transition zones" at airports. For our purposes here, we'll define "borders" as the division between sterile and non-sterile areas, and "transition zones" as the immediate areas on either side of that border.

For example, when you're standing in the queue to go through security screening, you're in a transition zone leading up to the border between the non-sterile area that you're presently in, and the sterile area on the other side of security. Similarly, when you're exiting the main terminal into the baggage claim area, you're transiting from the sterile to the non-sterile area.

When you're in the non-sterile side of the transition zone, you need to be especially alert for attackers that are getting ready to smash up against the security roadblock from your side of the border. The transition zone can easily become the epicenter of an attack, because a large number of people are concentrated here and the security apparatus can make it more difficult to go any further if you're armed. Because most people in the security queue are focused on activity ahead, they are unlikely to detect an armed attacker approaching from their rear until the attack is already underway. Don't allow yourself to become so absorbed in the action at the screening checkpoint, that you ignore the most likely and least defended avenue of approach to your rear.

When you're in the sterile side of the transition zone, you need to be alert for the same reasons. You are transiting from an area with a higher level of security to one that may not be secured at all, so you need to make

a conscious effort to increase your level of awareness as you enter this higher threat area. Pay even closer attention to the people in your environment, and what they are doing. Look around for the things in your environment that pose a potential threat, such as the unattended suitcase near the door, the unattended car at the curb, or the guy with the rifle walking through the door.

Escape Paths

Since it's important to control public access to certain areas in the airport environment, there are many doors that are either locked or alarmed. There are also many areas that are simply posted as "off limits" to the public, without much to actually block your entry.

Because it would be problematic for us to violate these boundaries in normal circumstances, there's a tendency to dismiss and ignore them as viable escape paths when danger arises. We need to guard against this tendency and force ourselves to consider all of these possibilities when the balloon goes up.

For example, if an attack happens while you're in the sterile area of the terminal, don't hesitate to exit through alarmed doors that lead to service areas or the ramp. Don't hesitate to enter a jet way door that's open (the airplane at the end can become a "lifeboat," or you can run out onto the ramp) or hop the counter of a restaurant so you can exit out through the kitchen and service hallways.

If you're in the baggage claim area, you can run outside through traditional exits, but you can also go through the curtains where the conveyor belts bring your luggage in from outside, or you can run back into the sterile area of the terminal through the exit lane. If you're near the ticket counters, you can hop them and follow the conveyor belt to flee through the service areas behind the counter.

Some doors may require an airport badge or passcode to open. Encourage airport employees (gate agents, wheelchair pushers, restaurant workers, etc.) to open them for you and follow you outside to safety if they seem hesitant to do so. If necessary, take the airport badge of a fallen casualty, so you can swipe open electronic locks yourself.

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Following these tips will certainly violate security protocols, but that's the least of your concerns in an Active Shooter or terror attack. In the 2013 attack in Los Angeles, thousands of passengers fled outside onto the aircraft ramp from the terminals (even from adjacent, but unaffected terminals), and it took the better part of the day to round everyone up, rescreen them, and resecure the airport so that flight operations could resume. Some passengers who fled outside even made it to the fence line at the far end of the airfield, crossing active taxiways and runways in the process! It was a huge mess and inconvenience for security personnel, but the important point is this—none of those passengers who violated security protocols got shot by the bad guy. The best way to avoid getting shot is to not be there, after all.

Assets

When you're in an environment where you can't be armed with a traditional weapon, the police become an even more critical asset to ensure your safety. Unfortunately, law enforcement personnel are typically absent in most parts of the non-sterile area. There may be a uniformed officer directing traffic outside the terminal or ticketing cars that are left in the loading zone unattended, but most police officers will be found near border checkpoints, or on the inside of security, in the sterile zone. This means that one of your most important defensive assets is unlikely to be in the area where the threat is highest.

In the event that the tactical circumstances prevent you from escaping or finding suitable cover, your best defense may lie in aggressively counterattacking the suspect. To do this, you've got to be mindful of the assets available to you, and be ready to practice the art of "environmental arming."

For example, the fire extinguisher on the wall can be used as a weapon to blind an attacker from a short distance, or to club him up closer. A soda cooler or a bookrack can supply missiles to throw at an attacker, to distract him from targeting innocents or completing a reload. A rolled magazine, wine bottle, or golf club can be used as an impact weapon. Densely-packed suitcases might become useful shields that are capable of deflecting edged weapons, or stopping handgun bullets or shotgun pellets (or at least robbing them of most of their destructive energy). Metal luggage carts, crutches, skis, chairs, or luggage can be used to help immobilize and pin an attacker, making it more difficult for him to use an edged or impact weapon.

Almost anything in your environment can be used as a tool or weapon, if you have the proper mindset to recognize it, and the will to aggressively use it. Few, if any, of these makeshift tools will be as effective as a firearm, but all of them are better alternatives to relying upon the mercy of an attacker. Force of numbers and appropriate timing (strike as the threat is reloading?) will help to maximize the use of these less efficient weapons.

Free States and Battlefield Pickups

We should recognize that there are many states where the possession of a concealed weapon in the non-sterile areas of an airport is entirely lawful. In these states, an armed citizen with the appropriate concealed carry permit may travel freely in places like the loading and unloading zone at the curb, or the baggage claim area. As a result, it's possible that you could be lawfully armed with your firearm at the moment an airport is attacked.

Additionally, it's possible you could find yourself in a position where you have access to a firearm that was dropped by a wounded attacker or police officer—the so-called, "battlefield pickup."

In either of these situations, it's vitally important to remember that other responders won't be able to see your halo, or read your "Good Guy" nametag when they arrive on scene, so you have to act in a manner that will discourage fratricide among the friendlies.

For example, it's probably wise to avoid "running to the sound of the guns" with your weapon out and exposed. If you came across a uniformed or plainclothes police officer who was also responding, then you could easily be mistaken for an attacker. As an armed citizen, you have no obligation to hunt down and confront the threat, so you're probably better off using your weapon to protect yourself, and the people you're responsible for, as you make your escape from danger. Use your weapon to defend against dangers that you encounter while running away from the sound of the guns, but don't go looking for trouble.

As you make your escape, keep your firearm as concealed as possible. If there's no visible or likely threat along your escape path, then keeping your gun holstered will help you to avoid being mistaken for the "man with a gun" that police are looking for. If the

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tactical circumstances warrant that you move with a gun in your hand, it's still possible to conceal it by putting the hand and gun in a pocket or the open top of a shoulder bag, camouflaging it with a coat draped over your arm, or simply leaving it in the holster under your garments while you move with your grip already established (especially if it's carried in places where this looks more natural, such as the appendix position). If none of these are suitable, then move with the gun by the side of your leg and pointed down (which is hardly noticeable in many situations, especially in the swirling mess of a panicked crowd), or at the low ready in front of you, with your trigger finger in a safe place away from the trigger, so that it's clear you're not threatening innocents. Bad guys move with their guns pointed at innocents and their finger on the trigger, and good guys don't. Your safe and professional gun handling may be the key to making an armed responder pause as he assesses whether or not you need to be shot.

If the circumstances dictate that you should take cover and hold your position, then choose a location that's defensible and allows you a good view of the approach to your location. Try to put your back to a wall, or at least choose a spot that makes it difficult for someone to flank you without your notice. These practices will not only keep you safe from attackers, but from responders who might mistake you for the armed threat.

If you have to shoot an attacker, don't approach them after they're down. It's extremely dangerous, and you also don't want to be standing over a body with gun in hand when the police come running around the corner. It's probably best to keep moving towards safety (this is not a typical defensive encounter, where flight may be interpreted as guilt), but if you feel like you have to stop and cover the downed suspect, take up a defensive position where you have suitable cover and a good view of the suspect and all avenues of approach. Loudly warn others about the potential threat and encourage them to stay away.

Calling the police to identify yourself as an armed good guy on scene is usually recommended in public situations where you've deployed your gun, but don't count on the information being received by those who need it. The volume of calls generated in an event like this may prohibit you from getting through at all, and even if you're able to pass along your message to the harried emergency operator, it's almost certain that the information won't get out to the officers in the field, or it won't be remembered by them in the chaos. Your

behavior is going to be the most important defense you have against fratricide.

Of course, if police contact is imminent, then it would be wise to put the gun away before they show up, if you can. If you're actually confronted by the police, then drop your gun and comply with their commands. Coordinate all movements with the police before you make them, and do everything slowly. Let them take you into custody and sort out your good guy status later, after the guns are put away and emotions aren't running so high.

If all of this sounds familiar to you, that's good. These are the same actions you should take as an armed citizen anytime you have to access your weapon in public.

The Final Weapon

Steinbeck wrote that, "The final weapon is the brain. All else is supplemental."

This is true in all conflict, but even more so in a conflict that occurs where you have been disarmed by security protocols, such as in an airport. Your awareness and your ability to detect and avoid threats is always critical to your survival, but when you're deprived of the ability to carry and use a suitable weapon as a last resort, then these functions take on even more importance.

So keep your head up and stay alert. Don't get buried in your phone or computer. Stay extra alert when you transit borders, or are forced to linger in prime target areas.

You may not have your gun with you, but you've always got your brain. Use it, like the powerful weapon that it is.

Lieutenant Colonel (Ret.) Mike Wood is a Network member and the author of [Newhall Shooting: A Tactical Analysis](http://www.newhallshooting.com), the definitive work on the watershed 1970 California Highway Patrol shooting that revolutionized law enforcement training and tactics. Please see the website at www.newhallshooting.com for more information on the book and Mike's other articles. You can also see Mike's work at <https://www.policeone.com/columnists/Mike-Wood/> and RevolverGuy.com. In addition to being an author, he is also an NRA LE Division certified firearms instructor for sworn and non-sworn students.

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President's Message

Denny's or the Corner Diner?

by Marty Hayes, J.D.

Q: Where do you want to go eat, honey?

Denny's or Lisa's?

A: Oh God, anywhere but Denny's!

Actually, I enjoy eating at Denny's when I am on the road, as I know EXACTLY the type of food I will get. It will be relatively tasty, fairly priced and the service will likely be adequate. I just want to eat and get back on the road. But, if I want to share a good meal with friends or loved ones, Denny's is not my first choice. Locally, we have a small diner called "Lisa's Diner," run by a lovely individual who makes great Southern cuisine, along with the best double bacon cheeseburger in the world. While this might be interesting, just what does it have to do with the Network?

Frankly, everything. You see, if one compared the Network to the other companies promoting similar products, it would be a Lisa's v. Denny's comparison. As the armed citizen community is figuring out what we knew nine years ago (that armed citizens need legal help after a shooting) the companies that came along after the Network was founded in 2008 are growing and surpassing the Network in volumes of members or customers. I recently saw one such company boasting of 240,000 members, and another supposedly has 58 employees! To compare, the Network has a modest 14,000 members and seven employees. We are the Lisa's Diner in the world of self-defense aftermath protection.

In fact, my original goal when I started the Network was 5,000 members and a half a million in the Legal Defense Fund. But we rushed right past that goal in 2012, and reset higher goals of 10,000 members and a million dollars in the Fund. We are now beyond those goals, too!

So, where does it end? First, the Network is in an enviable position. At a time when we are all bombarded by advertising in one media or another for these larger

competing programs, it is nice to know that the Network is growing, and not spending much money for promotion. That means we get to keep our membership dues as low as possible, along with continuing to grow the Legal Defense Fund. Thank you to our affiliates and members who continue to refer new members to us.

We also are starting to think that the Network is in a pretty good place right now. We have a great reputation, and are affiliated with the "A-team" when it comes to expertise in this subject matter. We have a fully funded Legal Defense Fund, and attorneys all across the country who are willing to come to the aid of our members if needed. We frankly do not need to grow any larger to fulfill our mission. Don't be surprised to find out at some point in the future that we have decided to close off new membership. It is not a decision we have made yet. Still, if you are not yet a member but are thinking about joining, you might want to make that happen, sooner than later.

More About the NRA

In a few days, the National Rifle Association's Board of Directors will be meeting for one of their quarterly meetings. I was considering attending and seeing if I could address the group, but since I already sent a letter to each board member, I am not sure what I would accomplish. Consequently, I think I will take those four days and do something productive, like fishing!

Much water has gone under the bridge since they introduced NRA Carry Guard, and I figured I would take this opportunity to let you know what I have learned. First, in the time since I wrote my letter to NRA Executive Vice President Wayne LaPierre last June (see <https://armedcitizensnetwork.org/open-letter-to-nra>) the Network has grown at an unprecedented rate. We are a thousand members stronger since the end of May, and our team has been working overtime here at the office to fill those memberships. While I do not fully know the reason for this bump, I figure it is because with the introduction of Carry Guard, more people have been considering buying some type of aftermath protection.

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When all their research is done, they likely decide the Network is the most honest, sincere and transparent organization, along with having the greatest amount of expertise to assist if needed.

Members have asked whether Mr. LaPierre responded to my letter. I received no word from him. I really didn't expect to, but it would have been nice to have the guy who keeps asking me for money to acknowledge that I am something more than a checkbook.

In July, I posted on our website and mailed a personally addressed paper letter to each NRA Board Member. At least that outreach got some response. Three board members responded to me—two in written form, and one via telephone. The two letter writers both were upset that I was trying to cast the NRA into some type of public shame, and both criticized what I had publically written. One even made a veiled threat, saying, "Be very careful how you proceed in your attack on the NRA, because up to now, the NRA is only a business competitor." I didn't take the threat seriously, but certainly kept the paper copy to show how the NRA plays ball.

In both the written letters, I was accused of being afraid of the competition, meaning that NRA Carry Guard would somehow put the Network out of business. Of course, it is the NRA who has demonstrated the fear of honest competition, when they kicked two competitors out of the 2017 NRA Annual Meeting.

The other board member chose to call instead of write. We had a cordial conversation and he in fact agreed with much of what I had to say, and promised to relay my feelings to the Board at the September meeting.

I wrote those letters to express two overriding concerns. First, being a Life Member of the NRA for many years, and an annual member for another 30 years before, I felt the NRA was going down a pathway that was not good for the organization, and I wanted to make sure they knew how this one member felt. Secondly, I have learned a little about social media and Internet marketing, and figured if I expressed my views in the public way I did, many more people would read my thoughts and as a result come to understand the benefits of Network membership and join us. I believe this was successful, based on the increase in membership.

I still believe the NRA is making a huge mistake with Carry Guard, but it is clear that my one voice will have no effect on them. There is a famous line attributed to Napoleon Bonaparte that goes like this: "Never interfere with your enemy when he is making a mistake." If one inserts the word "competitor" for "enemy," then the quote works for me. Consequently, I am done with this, at least for the foreseeable future. It has taken up too much of my time as it is, which in the end, time is all we have.

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Please enjoy the next article.]*



Attorney Question of the Month

Earlier in the summer, a member asked us what liability an armed citizen using deadly force in self defense would incur if the bullet either passed through or missed and hit an innocent bystander. For the purposes of this *Attorney Question of the Month*, we assumed no criminal charges were pressed against the citizen for the self-defense shooting and it was ruled justified by prosecutor/district attorney. We then asked—

Would the armed citizen likely face criminal charges for the collateral damage, and/or incur civil liability for that stray bullet?

So many of our affiliated attorneys responded that we carried half of the comments over to this month's journal.

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In Ohio if you are negligent you could be held liable, however the jury could consider the emergency situation in deciding whether there was a lapse of ordinary care, which is the definition of negligence in Ohio.

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In the words of my first criminal law professor, "It depends." Police and prosecutors will look at the totality of the circumstances in deciding what, if any, charges to file as the result of a stray bullet. Factors that are likely to be considered include: the degree of care demonstrated by the actor, prior training, number of rounds fired, number of bystanders in the vicinity, less lethal options that were or were not available to the actor, political pressure, prosecutorial ideology, and a myriad of additional factors.

The single best way to avoid criminal liability is to train, train, and train some more. Document your training and

be prepared for the financial commitment of retaining an experienced attorney. Stay safe.

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I think the best answer to this question requires that it be broken down into two areas: first, an over penetrative hit on the bad guy that subsequently strikes a good guy, and, second, a missed shot at the bad guy which instead strikes a good guy.

Provided that the lawfully armed citizen used good common sense, defensible as such in court, in their weapon/cartridge selection, the over penetrating hit would be unlikely to incur liability. For instance, a 110 grain .38 special jacketed hollow point which solidly strikes the person who is trying to take a human life, which against all odds passes through the bad guy and strikes and wounds a good guy 20 yards down range would, most likely, not be prosecuted criminally.

On the other hand, if our "good guy" utilized a .500 Magnum Smith and Wesson loaded with 500 grain solid bullets, and the round blasted through the bad guy, four more good guys and a bull elk in the next 200 yards, that would be tough to defend as not having been reckless and, thereby, manslaughter. That would likely result in a lengthy stay in the Graybar Hotel.

Misses, though extremely common, are often harder to defend if they cause collateral damage. The infamous NYPD shooting near the Empire State building a few years ago was a good example. Multiple gunshots fired by police officers struck multiple bystanders, in addition to the miscreant. Don't forget—our brothers and sisters in blue often get a bit more of a "pass" from the governmental prosecutors than most of us civilians are likely to see. I am not aware of any criminal charges that were filed in that case. I would bet the house that substantial civil payouts transpired, however.

We are all, simply put, responsible for every round that leaves the muzzle of our gun. It is assumed, by any
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jury that I have ever faced, that simply buying and carrying a gun is not enough. Reckless or even negligent use of a gun, due to lack of training and/or common sense will almost always wind you up in a great deal of trouble.

As far as civil liability, I believe it is anyone's guess. Frankly, most of us are not very attractive targets for such suits unless there is a good, solid insurance policy behind us. For intentional acts, that is extremely rare. For negligent or reckless acts that occur in or near your home or vehicle, there may well be an insurance policy that is enough of an attraction to result in a suit.

Political/racial/cultural considerations, unfortunately, will often come into play in predicting any such outcome. See the recent case *Florida vs. Zimmerman* for a good lesson on that type of nonsense. Nonetheless, such considerations come into play.

Use the right gun, ammunition and as much common sense and ability as you can muster. That is the best advice to reducing such worries.

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This question is more loaded than the gun used to shoot the bad guy. A lot would depend on the state law. If the state law provides both criminal and civil immunity on a shooting ruled justified by the prosecutor, then immunity would LIKELY prevent either criminal prosecution or civil suit. A personal injury lawyer could bring civil suit for the collateral damage alleging that the armed citizen was grossly negligent or acted with perverse disregard for the safety of others by not insuring that there were no innocent persons behind the criminal that may override the immunity statute. May not prevail, but could be enough to force a nuisance settlement. The good guy shooter knew or should have known that either a miss or over penetration was a likely result of his/her actions and disregarded that risk in shooting.

The prosecutor is the person to decide whether criminal charges would be filed and prosecuted. From the facts given, the prosecutor did not find fault with the

actions of the armed citizen. So, criminal charges would be unlikely.

"We, as criminal defense lawyers, are forced to deal with some of the lowest people on earth, people who have no sense of right and wrong, people who will lie in court to get what they want, people who do not care who gets hurt in the process. It is our job—our sworn duty—as criminal defense lawyers, to protect our clients from those people." —Cynthia Roseberry

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In most states, absolutely. The issue would be whether the injury resulted from recklessness or negligence. Since in most states recklessness would have resulted in a criminal charge, in this scenario negligence would more likely be the issue.

A case would be harder to prove if the bullet passed through the bad guy and hit a good guy. Choice of firearm might be an issue. Keeping a high-powered rifle for self defense might be found to have been negligent since a "reasonably prudent person" should have known of its power, range, and potential for over penetration. But, a civil defendant might beat that claim if the gun was a regular handgun loaded with expanding bullets. A miss would be more likely to pin liability on the owner, especially if he was chasing the perpetrator and shooting in a manner that could be found to have been careless or wild. This is especially so if the perp is no longer an immediate threat. It would also look worse for the gun owner if he was armed with a weapon with a larger than standard capacity magazine.

The bottom line is that it would be a question of fact for the jury. Different states have different standards of negligence. Another major factor is the composition of the jury pool. Jurors in pro-gun states where firearm ownership is common would certainly be better than jurors from anti-gun jurisdictions who think anyone who owns a gun belongs in a strait jacket. It would indeed make a world of difference being tried in Wyoming instead of New York City.

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What can go wrong when a bullet goes astray? Of course you can be sued if you are responsible for launching it. You own the unintended result of your action: harm to an innocent or to their property, depending on the law and the facts where this occurred.

Criminal liability generally arises from gross negligence or intentional acts spelled out in the law. Civil liability arises from simple to gross negligence, assuming a duty you did not have and causing injury, intentional acts, possibly from other theories such as contract!

I believe that surviving a physical threat and avoiding criminal liability is the tip of the iceberg. Civil lawsuits for negligence or strict liability can follow regardless of the outcome of a criminal investigation. And, sometimes a good guy does not survive the physical encounter, leaving the family and almost every bit of wealth exposed in a civil courtroom.

I am going to take an unusual tack with this question. A little over a year ago I was listening to a well-loved and respected Delta Force veteran, a Command Sergeant Major, speaking to 500 or so of us gun owners. He said something like, "if you haven't got a will you are unprotected. You are leaving your family totally at risk since you may lose the gun fight." About 7 of 10 Americans have no will, no trust, no plan according to conventional wisdom, leaving things to state law or chance to figure out.

He was right, but he didn't really go far enough. First, you should consider Network membership benefits, maybe self-defense insurance, to have resources to draw upon to help. Map out the benefits you get and whether or not they are enough to protect yourself fully in criminal and/or civil court. But in a belt, suspenders, and duct tape world you should plan to protect yourself, everyone you own AND every THING you own and such benefits are NOT enough. You see your certain risk is not self defense... it is all risks including disability, death, and taxes.

What if you create an integrated estate and asset protection plan? There are some attorneys out there who know how to do this well. It is more than conventional estate planning since its part art, part science in a way. You have a budget and a tolerance for complexity, so there is no magic one-size fits all solution. But the goal is to put you in position to negotiate a solution to any actual or possible lawsuit with the fewest of your dollars on the table, and some resources to settle that hopefully do not come out of your personal savings account. The key is to use the law far in advance of any need to position your assets so that they are unreachable by third parties.

How? We map your likely risks, assess how likely, then consider your resources and how exposed they are. Then we armor you up. For example, the law sets forth some few statutory exemptions like retirement accounts, cash value life insurance, annuities...but after those we need to consider asset protection trusts, LLCs, retirement plans and certain kinds of investments, that can be combined into a plan to take care of you if you are disabled, should die, or are sued. This kind of planning can even lower your income and estate taxes... like getting the government to pay for your plan.

Protecting those you love and all you own requires an onion strategy: you plan in layers to make it impossible or difficult and expensive to go after your assets. This gives you leverage to settle at a more reasonable amount, and if you have coverage, you can use it. Peeling apart an onion results in tears, and not yours.

What's the most likely threat? Disability, death, taxes...or a self-defense event? You can do yourself a favor and do a plan to cover all of them pretty cost-effectively.

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There is a gentleman in Alaska who attempted to commit suicide, received only a moderate head wound and the bullet exited to kill his girlfriend. He is charged with second-degree murder. Another gentleman was

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outraged that his car was being stolen, fired a multitude of shots and killed a neighbor. He pled to manslaughter. Both suicide and shooting at fleeing felons are illegal and that may be a factor.

The Appellate Court for South Missouri found that shooting in violation of the safety rules supports a conviction of manslaughter.

Typically intent follows the bullet. A bullet fired in self defense is justified even if it hits an innocent person. Prosecutors cannot be expected to know this. Self defense was never mentioned in my criminal law class. However that is no excuse. A nearby organization can put the citizen in touch with a lawyer who can explain it in words of one syllable or less.

There will be a lawsuit. Poverty is a great defense. A lawyer will not take the case unless there is a chance of getting paid. Survivors may sue out of grief alone, without thought of getting paid. The usual suspects may encourage a lawsuit to discourage people from acting in self defense. Having access to a program which provides money for a lawyer is Good.

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Maine law already deals with this situation via two statutes, at least in terms of criminal liability. Section 101 says: "Conduct that is justifiable under this chapter constitutes a defense to any crime; except that, if a person is justified in using force against another, but the person recklessly injures or creates a risk of injury to 3rd persons, the justification afforded by this chapter is unavailable in a prosecution for such recklessness."

The definition of "recklessness" is complicated. It imports concepts of the "reasonable person" standard, as well as current standards of care. Looking at the law, one would at first blush think that shooting around anyone would be problematic, precluding any self defense or "other defense" in a crowd. Section 35 says:

"A person acts recklessly with respect to a result of the person's conduct when the person consciously disregards a risk that the person's conduct will cause such a result" –which is modified by "For purposes of this subsection, the disregard of the risk, when viewed in light of the nature and purpose of the person's conduct and the circumstances known to the person, must involve a gross deviation from the standard of conduct that a reasonable and prudent person would observe in the same situation."

I requested and got an informal interpretation from a former head of homicide in the AG's office, that the "weasel words" in section 35 allow shooting in typical "active shooter" situations, because of the dangers of NOT shooting.

The feds probably use the "willful intention to cause unrelated harm" standard for prison riots, for mass shooting situations, and it is probably constitutionally sustainable for such circumstances. Several federal agencies are trained to shoot for the bad guy as if the intervening innocents were not there! State actors probably cannot do this, unless operating as feds.

This leads us to the issue of the remaining CIVIL liability for harm to an innocent third party. While not definitively answered by the CRIMINAL code (section 101 makes the code's justification provisions not specifically applicable to civil cases), the "emergency doctrine" might get us to the same place.

"The EMERGENCY DOCTRINE provides that a person confronted by an emergency that the person did not cause is not to be held to the same degree of care as an ordinary person with time to consider that person's actions. See *Hoch v. Doughty*, 224 A.2d 54, 56 (Me. 1966). The test for reasonableness of the actions of a person confronted by an emergency is how a reasonably prudent person would have acted when confronted by the same or similar circumstances."

We greatly appreciate our affiliated attorneys' generous participation in this interesting and educational column! Please return next month when we will have a new question to ask our affiliated attorneys.

Book Review

When Deadly Force Is Involved A Look at the Legal Side of Stand Your Ground, Duty to Retreat, and Other Questions of Self-Defense

By Bruce M. Lawlor

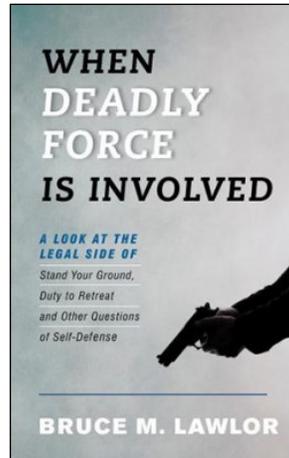
Rowman & Littlefield Publishers

\$36 at <https://www.brucelawlor.com/draft>

The author of the book reviewed this month retired from the U.S. Army as a Major General, has taught at the U.S. Army War College, and was the first U.S. Department of Homeland Security Chief of Staff. Before his military service, he was a trial lawyer with extensive experience in civil and criminal litigation, including cases involving self defense. He is certified as a firearms instructor and has conducted research on the use of small arms and the rules of engagement for military personnel operating in heavily populated, civilian environments. I was extremely interested in Bruce Lawlor's views on self defense, because his background is so different from the authors I usually read. Would *When Deadly Force Is Involved* be highly technical, like reading a compendium of state laws? I was pleasantly surprised!

"Self-defense, as a legal concept, is easy to describe, difficult to apply," Lawlor introduces. "Generally, a person who is without fault may use force, including deadly force, to defend against what he or she reasonably fears is an imminent unlawful threat of death or serious bodily injury, provided there is no reasonable alternative to avoid it." Instead of exploring the right to use guns in self defense, this book studies the legal aftermath and teaches a legal framework from which to understand the structure of our laws.

When Deadly Force Is Involved focuses on prosecutions, verdicts and retrials of defensive gun uses. In each of 15 interesting chapters, Lawlor delves into "a specific issue related to self defense, and describes how judges and juries go about deciding what to do." He creates scenarios based on self-defense cases he has studied over the years, focusing on "The legal reasoning...what was decided and why it was decided," to show what case facts resulted in verdicts against armed citizens, to help the reader "better



understand how specific questions relating to claims of self defense are answered." Each chapter wraps up with citations of various cases from which Lawlor drew the scenario and his discussion of the legal outcome.

Much is taught about how, to be justifiable, deadly force must be reasonable and necessary. Applying the concept of reasonableness to various circumstances is a repeating theme throughout Lawlor's book. He defines, "Necessity provides the

legal justification for self defense, but it can't exist without reasonable behavior on the shooter's part," briefly identifying that behavior as—

- not provoking, prolonging, or contributing to the encounter;
- reasonable belief, based on observable facts, that he or she is in mortal danger;
- reasonable force used, not more than is necessary to avoid the danger, and if deadly force is used, no reasonable alternative to its use exists;
- withdraw from a confrontation, after provoking it, his or her desire for peace must be made reasonably clear to the other party.

"In short, the need for reasonableness permeates every part of a self-defense claim," he sums up.

He comments on ways reasonableness is judged, whether through an objective inquiry into what a prudent person would believe or do under the same circumstances, or a subjective standard seeking to determine if the shooter sincerely believed innocent life was in imminent peril. He later explains that, "At the heart of every valid self-defense claim is a reasonable fear, held in good faith, that imminent death or serious bodily injury is about to befall a person if he or she doesn't act immediately to avoid it." Most states, he continues, ask juries to determine what a reasonable person in the same circumstances would conclude. A small fraction of states ask juries to "look at the facts through the eyes of the shooter to determine, based on what he or she perceived, whether it is reasonable to believe that deadly danger was present." While the distinction seems minor, the result is not, he shows.

[Continued next page...]

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Variations, he comments, reflect “the community’s belief.” This approach is “not unique to self-defense cases,” he adds, explaining that state legislatures pass laws that “reflect local values, customs, and traditions.” Lawlor calls this complexity, “a reasonable price to pay for living in a federal system of governance that allows fifty different state legislatures to have a voice in saying what is fair for their citizenry.” As an example, he cites duty to retreat laws. This is illustrated again in another chapter explaining stand your ground laws, and in another discussing how lethal force in defense is allowed more readily inside the home than outside, and how rules about curtilage vary from one state to another.

Lawlor illustrates the aspects of intent, innocence and immediacy in early chapters. Because each principle is introduced by a story, the human factor of how juries view the actions of their fellow citizens is highlighted, giving the reader much to ponder. Discussing the role of innocence in proving a claim of self defense, he outlines injudicious behavior that forfeits the right to self defense, stressing, “A person who provokes a confrontation, prolongs an encounter, or contributes to the circumstances that lead to another person’s death may not later claim the killing was necessary.”

In a section subtitled *Hostile Words and Threatening Behavior*, Lawlor warns against verbal escalation of a conflict, but addresses the other side of verbal threats: how what is said contributes to determining if your life is threatened. Here, as in earlier pages, he explains that along a continuum of actions spanning utterly harmless to extremely dangerous floats what he calls a “crossover point where non-life threatening behavior becomes deadly.” He discusses shooting when a furtive movement coupled with verbal statements of intent to kill makes deadly danger appear imminent. It is a complex chapter, but well worth the time to read several times to fully grasp the principles.

Lawlor also illustrates defending against threats that turn out to be false, like an unloaded gun brandished when the victim does not know it is unloaded. He teaches the doctrine of transferred intent applied to mistaken shootings of someone who is not an immediate, deadly threat, illustrating through stories what mistakes might be reasonable and which would not be, what a jury might be allowed to consider and what would be excluded by the judge. “When mistakes are made in

self-defense shootings the determining factor is whether a reasonable person, in similar circumstances, would have made the same mistakes,” he stresses.

Other chapters cover how the Castle Doctrine affects court decisions (its application is not as straight forward as you may have believed), and another explains de-escalation and withdrawing from mutual combat and what steps are required to regain the right to claim self defense. He outlines cases in which armed citizens left places of safety to confront danger, concluding after one case study, “Leaving a place of safety to engage an adversary...contributes to the circumstances that lead to the victim’s death, and for that reason the shooter forfeits the right of self defense.” On the other hand, he explains that Supreme Court rulings affirm that possessing a gun to defend against anticipated danger is lawful, that Americans are not prohibited from going to unsafe places where they are legally allowed to be, so long as their behavior remains within the constraints of the law.

The lessons are detailed, and important to understand; readers should get a copy of *When Deadly Force Is Involved* and set aside the time to study and learn from it. In many of the cases Lawlor discusses an appeals court concluded that the original trial court erred and ordered a new trial. Before cheering, “See, I knew it was OK to do that,” bear in mind that the people in his examples had to endure the first trial, get an appellate court to acknowledge that sufficiently severe errors to merit a retrial were made during the first trial, then enjoy better luck on the redo, despite the State already knowing all of the defense’s arguments and strategizing how to beat you.

Beyond a deeper understanding of the American justice system, the best lessons in Lawlor’s book are how the people in his stories wandered into dangerous legal territory, misjudged situations and were charged with a crime. How much better it is to learn from the mistakes of others, and avoid the problems altogether! The book’s closing pages contain a valuable eight-page bibliography, followed by an 18-page index of topics taught in *When Deadly Force is Involved*.

[End of article.

Please enjoy the next article.]

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News from Our Affiliates

by Josh Amos

Hello, everyone! I have the pleasure of giving all my Network Affiliates great news about the Armed Citizens' Legal Defense Network this month. With the entry of market followers like the NRA going into the post self-defense support industry, as well as all of the existing competition, there is a lot of heat on the post self-defense market. So we are proud to announce that new memberships in the Armed Citizens' Legal Defense Network are up all across the board, but especially those coming from referrals by our Network affiliates!

We are grateful that our affiliates recognize the value of the benefits that Armed Citizens' Legal Defense Network provides to our members. We further appreciate our affiliates passing our message and our value onto their students, customers, and friends. This networking by our "people in the know" allows us not only to compete, but to succeed against big companies who try to "buy" the market with high-priced, slick ads and empty words. We acknowledge that our industry is not an easy one to prosper in, and we are always rooting for our people who are working hard to succeed.

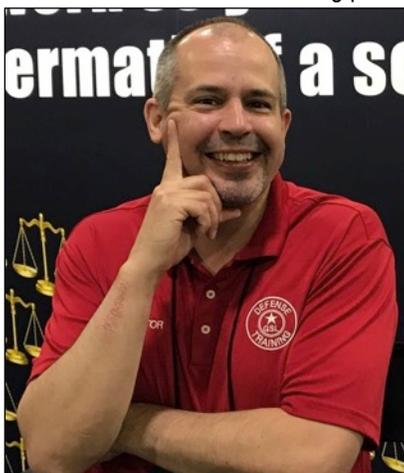
As the Armed Citizens' Network grows, so do the benefits that we provide to our membership. Our Legal Defense Fund is now over \$1,000,000 (and growing), and our initial attorney fee deposit has increased from \$10,000 to \$25,000. All of this is because of the great work our entire Network and especially what our Network affiliate members do by talking to their people about us and passing out our booklet *What Every Gun Owner Needs to Know About Self Defense Law*. All of your efforts are making a difference.

I would also like to mention that the response from my June article about sharing your "first call" attorneys with us has been great! We have brought several new and very capable attorneys onboard based on your recommendations. So for that and more, I say "Thank you!" and keep the recommendations coming!

A quick follow up to something cool I wrote about back in April: John Boch of Guns Save Life in IL has really promoted the Armed Citizens' Network to his students and dozens have joined! From my earlier mention of John, you may remember that one of the programs that Guns Save Life Defense Training teaches that really caught my attention was their one-day seminar *Personal Protection for Teens*. I know we all like to joke about how impossible teenagers are, especially high schoolers and college students, but John and Guns Save Life are doing a great job of reaching out to this underserved community and giving them a starting place to learn to look after themselves responsibly. John's website explains that "*Personal Protection for Teens*...teaches the young adult in your life, ages 12-22, the skills they can use to avoid trouble and keep themselves safe in today's world. Recent terror attacks and spree killings, along with increasingly violent cities have more and more folks thinking proactively about their safety and

security – as we all should. *Personal Protection for Teens* brings some very timely and potentially life-saving skills to a one-day class."

There's another session offered on Sept. 10th, so if you have family in this age group please consider sending them to this valuable class. You'll be supporting a member who really supports the Network.



See <http://gsldefensetraining.com/personal-protection-for-teens/> for details. And to John (pictured above), we extend a heartfelt thank you for all of his hard work!

In closing, we are really pleased and appreciative of all of the work that all our affiliates are doing to increase Network membership. Since it is the height of the training season, if you notice that your supply of the Armed Citizens' Network booklet *What Every Gun Owner Needs to Know About Self Defense Law* is running low, send me an email and I will get you more to share with responsible armed citizens that you meet at ranges, matches, shows, or clubs. Just drop me an email at Josh@armedcitizensnetwork.org and I will get you what you need!

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

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Editor's Notebook

Wisdom from Weird Places

by Gila Hayes

On Paul Simon's *Graceland* album the *Gumboots* lyrics include the lines that inquire: "Hey, is this my problem? Is this my fault?"

*If that's the way it's going to be
I'm going to call the whole thing to a halt!*

Although I'm fairly certain this is not what the lyricist intended, I've often invoked that comment when I find myself getting roped into conflict over situations outside of my responsibility—or when people ask what legal consequences might follow sticking their noses in to try to correct someone else's bad behavior.

I think we will look back on this time in our history as The Era of the Busybody. Not only do people have strong opinions – that has always been true – but these days, it is common for utter strangers to step in and take physical action to impose their beliefs of what constitutes "right" on others.

For example, no one wants to see an animal left in a car in hot weather suffer or die, but is a reasonable response waiting by the offender's car and upbraiding the motorist when he or she return? How will you explain to responding police officers that you butted in, bullied and pushed a stranger to the extent that they shoved you out of their way, and "it all went downhill from there?"

How about cursing someone who parks in a dimly marked handicapped parking space without a permit? In the early evening darkness last winter, I mistakenly

parked in the wrong area of a small grocery store parking lot. A ripe tomato paid the price for my misdeed. It was crushed by canned goods dropped into the car seat while I got away from a large, angry man trying to block access to the car because my error had deeply offended him.

Fortunately, though no spring chicken, I'm still fairly nimble, and I was able to get inside the safety of the car while staying out of his reach. I gratefully drove away, leaving him ranting and waving his arms angrily. It was, in essence a non-event, and other than afterwards asking myself the "What if he had..." questions, the idea of defensive gun use was far, far down on the list of possible response options.

How might it have played out if that righteously over aggressive soul had gone after someone who was not able to get away?

Before self-righteously getting right in someone's face to coerce them to act in accordance with our own beliefs—be that animal rights, rights of the handicapped, public expression of political stands, or whatever the current cause celebré is at the moment, let's stop and ask, "Is this really my problem?" Is it worth escalating into a physical fight and possibly ending up in prison over?

If it really is not, maybe we'd better "call the whole thing to a halt," as Paul Simon famously advised, and tend to our own human faults and weaknesses, not those of others. Armed citizens need to behave to higher standards. Let's keep that in mind as we interact with the people around us.

*[End of September 2017 eJournal.
Please return for our October 2017 edition.]*

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About the Network's Online Journal

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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.

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



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