



Jury Selection: Body Language in the Courtroom

by Dr. Wendy Saxon

In last month's introductory article to this two-part series, I discussed pre-incident positioning and then recommendations for preparation before a jury pool is summoned for jury selection (if you missed it, see <http://armedcitizensnetwork.org/our-journal/301-january-2014>.) In addition, court procedures for seating the jury were detailed. As the jury observes the defendant, there are many non-verbal indicators that affect their impressions, just as there is much to be learned from watching the actions of prospective jurors.

You need to concern yourself with your dress, demeanor, and overall appearance both before the incident, after the incident, and certainly during any court appearances. This is majorly important, as the prospective jurors will be watching you and sizing you up according to their standards of acceptability.

Recall my advice on how you present yourself pre-incident? The vast majority of prospective jurors everywhere "know" that lawyers "clean up" their clients for court. How unfair is that, if you are a person who already has the class and sense to dress respectably in places like church, weddings, and court? Now, you may be confronted by a prosecutor waving around photos of you from social media sites...if they exist. Protect yourself from that ahead of time. And during trial, bear in mind that you are watched not only in court but in the hallways, the parking lot, in nearby restaurants. With minimal factual information, and due to understandable curiosity, prospective jurors are unconsciously making decisions about you from the get-go! That's just human nature. Those initial impressions may be hard to overcome if they aren't favorable to you, your lawyer, and your overall case.

Okay, you've got that, but what can you DO to participate in jury selection? First, I am going to share with you my instruction on body language in the courtroom. This is a simple system I have taught to lawyers, paralegals, and investigators for thirty years.

Please remember that prospective jurors are aware that they are being watched, and while in the jury box they will almost all engage in what is called SIGNAL BLUNTING. This means that they will constrict their movements and facial expressions to such an extent that they all look alike, like something out of *Invasion of the Body Snatchers*. These guidelines, however, should assist in making more informed decisions.

Let's think of the process of jury selection as a social event. These strangers from all walks of life have come in and sat in the jury room for hours if not days. They chat. They form little groups I will call dyads and triads. Some people are overly chatty and the others give them a cool shoulder and they eventually withdraw. Other people make it clear that they don't want to socialize; they sit apart and gaze intently at their books as though they were studying something really serious.

The majority of prospective jurors fall somewhere in between the overly friendly ones and the stand offish ones, and gradually as with any small group process, they strike up conversations, listen to others' conversations, get accustomed to their social environment. They learn that they are free to mingle or not mingle, until some person in authority directs them to a courtroom. Once there, they sit in the hallway and are free to again mingle or not mingle. By the time they are invited in to the courtroom to start the jury selection process, they each have a "persona" to maintain vis-à-vis fellow jurors.

What this means in terms of our mission as jury pickers is that they have already established group cohesiveness, which will last only a short time but is present nonetheless.

Nonverbal Leakage

Some parts of the body can be controlled more than others. The easy parts to discipline are those parts

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whose actions we are most aware of in everyday signaling. We know most about our facial expressions, and so they come out on top on our self-awareness list. We lie best with our faces.

Hand movements and postures are more useful clues to deception because our jurors will be less aware of them, and there are no set rules to blunt manual expressiveness. Normally there will be gesticulations, and these can be studied carefully for deception clues.

Finally, the legs and feet of our jurors will be of particular interest because this is the part of the body where they are least aware of what they are doing. Frequently, however, the actions of this lower region of the body are obscured from view so that, in practice, their usefulness is severely limited. Legs and feet are a vital give-away area.

Whole-body lying is difficult for most people because most people lack practice. Few people are ever called upon to engage in sustained, deliberate deceit. Most of us would be classified as leakers, and we have a majority of those on any jury pool. But there is a minority of devious people we shall call professional non-leakers. Since most prospective jurors are leakers, if you suspect that a prospective juror is consciously, deliberately lying to you, his body language may help to confirm your suspicions.

Non-leakers are those whose working lives involve repeated and prolonged deceptions and, what is more, deceptions that are open to challenge. Unless they are capable of lying successfully and sustaining their lies, they are doomed to failure in their chosen professions. As a result they have to become adept at contextual manipulation (choosing the right moment to lie) and at whole-body lying. This may require years of training.

How do we detect lying in the professional non-leaker? To be a successful nurse, one must learn to be a convincing liar. Studies were done with nurses, and the researchers found that:

1. When lying, the nurses decreased the frequency of simple gesticulations they made with their hands. The hand actions they would normally use to emphasize verbal statements – to drive home a point – were significantly reduced. The hand actions, which act as illustrators of spoken words, are not identified

gestures. We know that we wave our hands about when we are talking excitedly, but we have no idea just exactly what it is that our hands are doing. Our awareness that our hands do something, but our unawareness of precisely what it is, makes us suspicious of the possible transparency of these actions. Unconsciously we sense that perhaps our hands will give us away so we suppress them. This is not easy to do.

2. When lying, the nurses increased the frequency of hand-to-face self-contacts. We all touch our faces from time to time during conversations, but the number of times these simple actions are performed rises dramatically during moments of deception. Deception favorites include: the Chin Stroke, the Lips Press, the Mouth Cover, the Nose Touch, the Cheek Rub, the Eyebrow Scratch, the Earlobe Pull, and the Hair Groom. During deception any of these may show a marked increase, but two in particular should be watched for in the courtroom: the Nose Touch and the Mouth Cover.
3. When lying, the nurses showed an increase in the number of body shifts as they spoke. Watched closely, the liar can be seen to make tiny body-shifts and to make them much more frequently than when telling the truth. They are slight changes in the resting posture of the trunk as the speaker moves from one sitting posture to another.
4. When lying, the nurses made greater use of one particular hand action, namely the Hand Shrug. While other gesticulations decreased in frequency, this became more common. It is almost as if the hands were disclaiming any responsibility for the verbal statements being made.
5. When lying, the nurses displayed facial expressions that were almost indistinguishable from those given during truthful statements. Almost, but not quite, for there were tiny micro-expressions that leaked the truth. These micro-expressions are so small and so quick – a mere fraction of a second – that untrained observers are unable to detect them.

These micro-expressions are caused by the face's all-too-rapid efficiency in registering inner feelings. When

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a mood change seeks expression, it can expect to be registered by the alteration in the set of facial muscles in much less than a second.

The counter-message from the brain, telling the face to shut up, often fails to catch up with the primary mood change message. The result is that a facial expression begins and then, a split second later is canceled by the counter-message. What happens on the face during the split second delay is a tiny, fleeting hint of an expression. It is suppressed so quickly that most people never see it, but if watched for carefully during lying sessions, it can be detected and is then one of the best deception clues.

If we set up an experiment to test lying, we are in danger of missing the more general significance of the behavior we find. What nonverbal leakage really shows is not merely lying, but a basic inner-outer conflict of an acute kind, with thoughts and feelings mismatching at a moment of tension. If this means that we cannot be certain a nose-toucher is lying, we can still be sure that something is going on in his brain that he is failing to externalize and communicate to us verbally. The juror may not be lying in the strict sense of the word, but he is certainly hiding something from us, and his nose-touching is leaking that fact to us.

Let's say you are asking a prospective juror questions and you find his responses somewhat incredible. A favorite example of mine is the man who lies about his combat experience. And let's say you know nothing about military combat personally. Maybe you and the juror have read the same autobiographies.

Sometimes, actually often in social situations, we engage in what is known as "the Co-operative Lie." This means essentially that two people are talking and one is lying and both people know it. Let's say that the prospective juror lying about his combat experience has been so skillfully questioned that he is aware that he has run in to someone who may indeed expose him. That's an incredible embarrassment in front of everyone in the courtroom, including the men his own age that he has been chatting up about his military experience. At the point at which the attorney lets the juror off the hook and thanks him for his time and asks to approach the bench, the attorney and the juror have entered into an agreement to participate in a Co-operative Lie. This is a

face-saving move that both conspire to engage in, for the sake of comfort and to avoid emotional distress. The judge, when he calls the juror to the side of the bench, is usually not so kind, especially if he is a veteran. But even judges merely excuse the juror, rather than confront the juror.

Contradictory Signals

When we are being dishonest our behavior often fragments. When this happens, we may give contradictory signals. These are different from ambivalent signals. Both reflect conflict. Ambivalent signals are the result of a mixed mood. An excellent example of this that almost everyone has experienced is the dog that engages in intention movements of approaching to get a treat in our hands and intention movements indicative of retreating or preparation for flight. Both parts of an ambivalent signal should be seen as genuine and the observer should react to both accordingly.

Do we ever see this sort of signal coming from a juror who is being questioned? Depending on what your goal is, or what your case strategy is, you will probably be very eager to have actively ambivalent jurors hear your case. A contradictory signal is based on a single genuine mood that is overlaid with a deliberate outward lie. The rival elements in a contradictory signal have to be assessed as belonging to either the easy-lying type or the difficult-lying type. The more aware a performer is of a particular action he is making, the more likely it is to be a body-lie. Actions performed unconsciously are going to escape faking and reflect the true inner mood of the signaler.

Bearing this in mind it is easy to construct a BELIEVABILITY SCALE for different types of action. Starting with the most believable and ending with the least believable:

1. **Autonomic signals.** These are the safest of all because even when we are aware of them we can rarely control them. These autonomic signals resulting from physiological changes that are beyond our deliberate conscious control are obviously particularly valuable when trying to sort out the true and false elements in a contradictory signal but they are

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unfortunately limited to the more powerfully emotional situations. For less dramatic moments we have to turn to other body actions.

2. **Leg and foot signals.** During ordinary social intercourse it is the lower parts of our body that seem to escape the net of deliberate control most easily. Our attentions are face-focused. There is no pressure on the juror to exert deliberate control on his foot actions. They therefore provide valuable clues to his true mood. The obvious example is the juror who listens and responds patiently to the lawyer questioning him, but whose foot is making jabbing movements as he does so. The examination is an ordeal that the juror wishes to escape from. However, it can mean much more than that. Small aggressive foot kicks of an abbreviated kind may accompany friendly upper-body actions. Also have your assistant watch for tense, leg-squeezing postures or restless leg-shifts and repetitive foot-jiggings that indicate a blocked urge to flee. Sexual leg actions can conflict with upper-body primness.
3. **Trunk signals.** The general body posture in an informal situation is a useful true-mood guide because it reflects the general muscular tonus of the entire body system.
4. **Unidentified gesticulations.** The hands come under slightly more control than the feet, legs, and trunk, if only because they are more often in view. Many hand actions are indefinite, vague movements to which no names have been attached, and these are the least controlled of hand gestures. Some jurors use their hands in this manner. They are usually expressing utterly sincere emotions and are emphasizing the passion of their position with these movements. Watch out however for ambivalent signals, as in a juror who expresses lack of pleasure in passing judgment on another human being while jabbing aggressively at the air.
5. **Identified hand gestures.** Many hand actions are precise units that act like small emblems. They are contrived gestures, deliberately performed. We may not plan such gestures, but when we do them we are

fully aware of the fact. They differ markedly from the ordinary gesticulations of which we are only vaguely aware as we perform them. Because of this they cannot be trusted if they appear as part of a contradictory signal. They are about as suspect as facial expressions and should generally be ignored in favor of other signals already discussed.

6. **Facial expressions.** Facial difficulties that we have never identified are difficult to fake. Such include a slight narrowing of the eyes, an added tension to the forehead skin, a small in-turning of the lips, or a minute tightening of the jaw muscles. The face is so complex that it can express a change in underlying mood while hardly altering at all in the sense of there being any gross action changes. Putting on a big smile, or a deep frown, will to a large extent overlay these minute muscle changes, but will not exclude them altogether from view.

It can be said that whenever a contradictory signal is transmitted, in which the two conflicting messages cannot possibly both be true, the false one can be identified by referring the two signals to the believability scale I have described.

Three general principles have emerged. An action is more likely to be reflecting a true mood: (1) the farther away from the face it is; (2) the less aware the performer is of it; and (3) if it is an unidentified, unnamed action that has not become a recognized unit of behavior among the general population.

Now that you have everything there is to know about reading body language in the courtroom, I am going to share my courtroom worksheet in a later article, along with suggestions for case-specific juror questionnaires.

We are grateful that Dr. Saxon so generously shares her knowledge and time with our Network journal readers! Watch for her byline in future editions.

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



President's Message

It's a Matter of Trust

by *Marty Hayes, J.D.*

In this day and age of declining morals and decreasing personal responsibility, it is difficult to trust other people, especially people whom you have never met. This is especially true if money is involved. I know that, and it is one of the uphill climbs that we faced when we started the Network. Let me explain.

The whole Network is built upon trust. Members of the Network trust that we will indeed put the 25% of member dues into the Legal Defense Fund, and that fund will grow and be there for them if needed. Members of the Network trust that we will do what we say we will do. Members who have joined for more than the minimum one-year period trust that we will continue to be around for the length of their three- or ten-year membership term. A member of the Network must have a lot of trust in us.

One of the reasons that we originally asked our trustworthy friends in the industry—Massad Ayoob, John Farnam, Tom Givens and the late Jim Cirillo—to be the initial members of our advisory board was to use their good names and reputations to lend credibility to the Network, as many people outside of the Pacific Northwest had no clue who Marty and Gila Hayes and Vincent Shuck were. I believed that the Advisory Board's involvement would help prospective members trust us. Additionally, when we started recruiting members, I reached out to the firearms training community to help introduce us, as one of the most trustworthy people most new gun owners find is their first firearms instructors. We have grown as strong as we are primarily through that network of Affiliated Instructors and through gun shops participating in a parallel program.

None of this is news, and I know I've said it in this column before, but perhaps in different ways. I am saying it again because last week, we heard from a Network member who told us that he had contacted one of our Network Affiliated Attorneys. He told us that

attorney wasn't completely on board with the idea of representing our member if needed, without being paid a retainer up front from the member. I called the attorney in question, and we had a nice chat about how the Network pays the deposit against fees to the attorney for initial representation of a member after self defense. Now, just to clarify this part of our member benefit program, here is how it is supposed to work. First, the member is involved in a self-defense incident. Next, the member or a member's trusted friend or family member either calls the attorney the member has pre-selected, or calls our *Boots on the Ground* phone number listed on the back of their membership card, and we help the member find an attorney. All this takes place as soon as possible after an incident.

Once an attorney is selected to represent the member, the attorney must be assured that he or she will, in fact, be paid, because if the attorney deems necessary, he or she will send investigators and other assistants out to the scene of the incident to help preserve the evidence and to interview possible witnesses. They will need to pay these investigators, and of course, the attorney also must be paid for his or her time, otherwise they couldn't stay in business.

In one of the six cases the Network has handled for members so far, the member was asked by his attorney for a \$1,800 retainer. The member had contacted this attorney outside the structure of the Network (that is to say, the attorney was not a Network Affiliated Attorney), and the attorney needed a retainer fee up front. When we found out about this, we told the attorney that we would send him the \$1,800 and he could then reimburse the member for money the member paid up front. This was satisfactory to all concerned.

Thinking back further, in our first case, the member's father contacted us right after the incident, while the member was still in jail, and because time was of the essence, we wired the \$10,000.00 retainer against fees to the member's attorney, who was our Affiliate. In the other four cases we have been involved with for members, when we knew whom the attorney was, we simply mailed a check either next day air or priority mail at the attorney's behest.

Now, returning to my conversation with the Affiliated Attorney last week: After explaining all of this to the

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attorney, she was then satisfied that she could make an appearance for our member immediately after the incident, hire investigators to protect the exculpatory evidence, and that she would indeed be paid by the Network. In other words, she would TRUST us to pay up to a \$10,000 retainer for this initial representation.

Actually, I am glad this issue came up between one of our members and one of our attorneys, as it allowed me to use this example to explain to our attorneys and members how the Network program works.

But, we are not done yet! The Network member must still trust us to make an honest appraisal of his or her case, and if the incident was a legitimate case of self defense, pay their legal defense expenses from the Legal Defense Fund. And, we must trust the attorney to give us the information we need to make that decision, and that has to be done without asking the attorney to violate the attorney/client relationship.

In return, the Network also places a large amount of trust in our members and their attorneys. We trust that our members have not lied to us about their legal status to lawfully possess firearms. We trust our members to keep their dues current, as we cannot in good conscience spend Network money on people who are not currently part of the Network. We trust our members to watch and study the educational DVDs we send, and to read this online *eJournal* to get even more education on the lawful use of force in self defense. In fact, our whole model is predicated on defending a well-educated armed citizen who necessarily took the steps to defend self or family and can show in court WHY they felt it necessary to use deadly force in self defense.

We also must trust the attorney who is working for our member to not waste the resources of the Legal Defense Fund, while giving our members the best possible legal representation that resource can buy. When defending a member against a malicious or unmeritorious prosecution, the attorney has a precious commodity: a truly innocent client. Innocent clients do not come along every day for attorneys and we trust they will respect and cherish this gift that has been given them.

Pretty heavy stuff, if I do say so myself. It needed saying and I hope those members and attorneys who might not have perfectly, clearly understood how our membership benefits work now feel a little more at ease. If you still have questions, please give me a call.

Report from SHOT Show, 2014

I attended my 21st (or was it 22nd?) SHOT Show last month and despite hobbling around the show with a disk out of place in my back (it is mercifully back in place now), I still had a good time. We approached this show a little differently since foremost our agenda was discussing the new Armed Citizens' Educational Foundation with industry leaders we know, to get a feel for how the Foundation can help serve the industry. We came away from these meetings with some very good ideas and we thank everyone who took the time to talk with us. As the months go by, we will be putting the Foundation's programs in place and report back to you when we do.

Glock Nails It

The buzz around the show was the introduction of the new Glock 42, a compact .380 ACP pistol. I didn't make it to the media day at the range this year, so didn't get to shoot one, but from all accounts, Glock has a real winner here. As soon as possible, I am getting one for my teaching business. Of course, the problem with this new pistol is that it is offered in .380 ACP, which, as the savvy people of the industry admit, is not the best "man-stopper" caliber. So be it. I for one would not want to be shot with a .380, and with proper shot placement, it will do very nicely. For the recoil adverse shooter, and specifically the new shooter, it will make a GREAT first gun.

Coincidentally, I also came across a new ammunition company, Liberty Ammunition. This start up company is selling a lightweight, ultra high velocity bullet that I think is just the thing for the Glock 42. It should increase the effectiveness of the .380 ACP pistol cartridge sufficiently to make the Glock 42 a pretty serious handgun in the right hands.

The Guns and Ammo of the Network

Each year, the Network advisory board (<http://armedcitizensnetwork.org/defense-fund/advisory-board>) meets while attending the SHOT Show. We have a nice dinner, discuss any Network business we need to work through, and when business is over, we open the table up for discussion of whatever topics come up. This year, the question was what guns and ammo the advisory board and their spouses routinely carry. It was

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interesting, so I started taking notes. To make the answers complete, I also queried a couple members of the board who could not make the meeting.

Before we get into the specifics though, let me point out that the collective experience, knowledge and wisdom of the Network Advisory Board (plus spouses) exceeds 190 years of dedicated, 24/7/365 full time firearms carry for self defense.

Not surprisingly, the answers were all over the board, but also not surprisingly, Glock was the leader with a total of five people out of 14 saying they usually carried a Glock. Smith and Wesson came in a close second with four. Of the Glocks, the models included the 35, 31, 17, 19 and 26. The four Smith and Wessons were two M+Ps, one Shield and one 3953. For those who are not familiar with the 3953, it is a single stack double action only pistol with an aluminum frame, and a very nice, smooth trigger. No longer made, the 3953 was, in my opinion, the best of the Smith and Wesson pistols made in the 90s, and I still own one myself, although I haven't carried it for years. Only two people on the board indicated they carried a 1911 in .45 ACP, both Colt Defenders, the lightweight compact version of the venerable 1911. One person indicated a preference for the Springfield EMP as an everyday carry gun. We also had two indicate they carried the Kahr Arms in 9mm.

Ammunition

Major brands of ammunition ruled the day, with no specialty rounds mentioned. Speer Gold Dot and Cor-Bon were the most popular ammo brands, and specifically, Gold Dot loads in 9mm, .357 Sig and .40, with Cor-Bon loadings in 9mm, .40 and .45. Two other brands were also mentioned, Winchester Ranger and Federal Hydra-Shok.

That list shows pretty serious guns and ammo carried by a serious group of individuals. The take away? People who have a lot of experience, education and training tend to use mainstream guns and ammunition. No custom guns, or specialty ammo carried amongst the Advisory Board. That is, as they say, "a clue."

Educational Foundation Concerns

I received an email from one of our members, congratulating us on going forward with the Foundation, but expressing concern we might get bogged down in

the gun-rights movement, as the Foundation mission statement indicates we intend to educate the armed citizen on "rights and responsibilities" of gun ownership and self defense.

Please understand that we won't specifically be involved in the fight to keep our gun rights, as there already are many excellent Second Amendment advocacy groups already doing a great job in that arena. To add another would only serve to dilute the effectiveness of those already in the trenches fighting. Instead, the "right" mentioned in our Foundation mission statement is the right to self defense. Through educating those who carry guns, we hope to preserve that right. Each time a gun owner makes a mistake with a gun, that mistake is used by those who do not believe in the right of self defense to try to take away that right.

Look at the efforts after the George Zimmerman prosecution to try to change "stand your ground" laws. And George was innocent! I wonder though, if George would have had the same education as our members do, would he have taken some of the actions he did that fateful night? Somehow, I suspect he might have done a few things differently.

Marty has jury duty!

I have been called for jury duty for the month of February, a civic duty many of you also have performed. I have been called before, but never served on a jury. In my county, Lewis County, WA, we have to serve for the whole month or until excused. While I would actually quite enjoy serving on a jury, this call unfortunately is causing me to have to cancel my participation in the RangeMaster Tactical Conference.

I was very much looking forward to giving a new presentation *Court-proofing Self Defense* but alas, we will have to wait until next year. I find it ironic that I am called for duty this month, considering Dr. Saxon's excellent articles on jury selection and understanding juries. Life is full of coincidences. If I do actually get on a jury, I will give a full report next month!

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

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Letters from Members

I noticed right away the *Jury Selection* article urges us to remain silent post shooting until a lawyer arrives. In writing this, Dr. Saxon directly contradicts strong advice by both Marty and Massad that such behavior can give investigating officers the sense that we feel guilty about something and thus contradicts any subsequent statement that we sincerely believed (and any reasonable person would therefore agree) that we were justified in using lethal force. The impression I got from Massad at the Seattle seminar of a couple years ago was that convincing investigating officers and the prosecutor of our innocence, trumps planning for a trial that we hope never happens.

Is there a conflict between behavior that reduces the probability of arrest and prosecution and concern about a jury's view should the case be prosecuted?

—David in WA

We respond—

Whether or not to speak to the police immediately after a self-defense incident is a topic that divides the self-defense/legal community, and is a topic far too complex to discuss in a simple answer to your question, David. The good news, is that I spend a whole article discussing this very issue, please see <http://armedcitizensnetwork.org/unintended-consequences-of-silence>.

One characteristic distinguishing the members of the Network from other gun owners is the keen interest we all have about this subject. There is no perfect answer to this question, because each incident will be different. The more we know and understand the issues, the easier it will be to make a logical choice as to what to do when faced with that question. We welcome Dr. Saxon's keen insight and all of us can learn from her experiences.

—Marty Hayes

What kinds of guns and attachments are least/most likely to upset a jury?

—Richard in WA

We respond—

In answer, we direct your attention to several articles in past editions of this online journal. The October 2012 interview with researcher Glenn Meyer, PhD is a wealth of information about test-group "jurors" responses to various types of firearms. See

<http://armedcitizensnetwork.org/our-journal/276-october-2012>. In addition, Network President Marty Hayes wrote a detailed article about this topic at <http://armedcitizensnetwork.org/guns-appearances-matter> and we direct our members' attention to both of these articles as they mull over concerns about jurors being diverted from the issue of justifiable use of force in self defense by spurious accusations about defense gun choices.

—Gila Hayes

I'm going back and reviewing recent (Fall 2013) issues, as well as older preserved articles from the Journal main page. Yesterday I read Marty's long article on the Zimmerman trial in the August 2013 issue. This morning I am reading the 2008 article on gun selection (<http://www.armedcitizensnetwork.org/choosing-self-defense-guns>). Deep in the 2008 article, I came across this paragraph on ammunition selection:

"Exemplar ammunition for testing could be critical in two main areas. First, an independent expert needs to test the dispersion of the unburned gun powder and other residue that creates the stippling seen on individuals shot at close range. Suppose you claim the person you shot was right on top of you when you pulled the trigger, but analysis of the gunshot shows little or no stippling. Suspicion that you lied, because normally stippling would be present. Let's say you used extremely efficiently burning powder, and your particular load produced little unburned gunpowder. Your report is indeed accurate, but nearly impossible to prove. If, instead, you had used commercial ammunition, tests conducted using cartridges from the same lot of ammo corroborate your claim. If, however, no exemplar ammunition is available, no test can be made, and the other side may convince the jury that you lied about the assailant's position when you pulled the trigger."

That sure sounded familiar! Marty's fourth lesson learned in the Zimmerman article went right to the point of ammunition selection and stippling evidence, in this high-profile case in which there was a contested claim of who was on top of whom, the very situation Marty used in his 2009 article. Excellent real (very) world illustration of our training through the Network.

Keep up the good work, fighting the good, (and right) fight!

—Cragin in VA

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Attorney Question Of The Month

This month's column is based on a series of related questions we asked Network Affiliated Attorneys about their state's standard or pattern jury instructions. As the questions are quite specific, several attorneys responded by simply answered "yes," and "no," and for ease of associating their responses with the questions, we present those first. Other attorneys offered greater detail, and their responses complete this column.

The questions we asked our Affiliated Attorneys are—

1. *Does your state have a "standard" jury instruction for the use of defensive deadly force?*
2. *Is it considered state-friendly or defendant-friendly?*
3. *Can a defendant in your state get a jury instruction regarding self defense in lieu of or in addition to the standard instruction?*

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3. Yes

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1. Yes, in Georgia.
2. I don't consider jury instructions to be friendly toward either party. They should (and do) accurately reflect the law. The law in my state (Georgia) generally is as friendly toward defendants when it comes to self defense as most if not all states.
3. Qualified yes. If the facts of the case fit the instruction, a defendant is entitled to any instruction he suggests for which there is legal support (such as an appellate court opinion).

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The answers to your questions in Texas are as follows:

1. Yes;
2. I'd say more "defendant-friendly" than other states; and
3. Yes.

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1. Utah does not necessarily have a "standard" jury instruction for self defense.
2. Utah is defendant friendly when the issue of self defense/deadly force arises.
3. Supplement jury instructions are a usual matter in jury trials. There should not be an issue of a defendant submitting supplement jury instructions.

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Wisconsin has a jury instruction specific to the use of force intended or likely to cause death or great bodily harm (WJI805). This instruction charges the jury that adequate self defense lies when the defender believed there was an actual or imminent unlawful interference with his person (or others), the defender believed the applied force was necessary—the subjective element, and that, in the eyes of the jury, that belief was reasonable—the objective element.

This is a fairly standard self-defense instruction, and in my view gives me what I need to defend my case. To

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have the instruction submitted to the jury, the defender must show "some evidence" that the defense properly lies. Thereafter the state must disprove the defense beyond a reasonable doubt.

A discussion of Wisconsin's Castle Doctrine, which took effect in December of 2011, gets complicated. The instruction cited above is THE self-defense instruction in Wisconsin. The Castle Doctrine does not create a new instruction, nor mandate that the jury *presume* anything (this, according to the Jury Instruction Committee's law note 805A). Rather it creates presumptions that the judge must follow in deciding whether to submit THE standard instruction to the jury. Under Wisconsin's Castle Doctrine if the defender is present in his dwelling, place of business, or motor vehicle and the offender enters by force, the court can't consider opportunity to retreat and shall presume the defender reasonably believed that deadly force was necessary to prevent death or great bodily harm. With these judicial presumptions met, THE self-defense instruction will be given to the jury.

While Wisconsin's self-defense instruction is defense friendly enough, the Committee's interpretation of the Castle Doctrine doesn't seem to move the ball down the court as far as the legislature may have intended. The appellate courts have yet to speak. I would always ask for a specially crafted instruction when the case law appears to support it, but getting one is a long shot. Judges view pattern instructions as safe islands in shark infested waters and seldom go wading.

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The State of Illinois IPI (Illinois Pattern Instructions) does have a standard self-defense instruction, IPI 24-25.06, which reads as follows:

A person is justified in the use of force when and to the extent that he reasonably believes that such conduct is necessary to defend [(himself) (another)] against the imminent use of unlawful force.

[However, a person 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) (another)]) (the commission of ____)].]

I would not necessarily label the instruction either defense or State friendly. The facts of the situation are what will determine whether or not the instruction is given. I believe it might edge toward the defendant, if given, by the language above.

The pattern instruction would be the instruction given by the Court in most situations. Depending on the specific facts, there may be some opportunity for additional instructions to be tendered.

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Washington State has a number of Washington Pattern Instructions - Criminal (WPIC), which are favorable to the defense.

WPIC 15.01 provides that the prosecution has the burden of proving beyond a reasonable doubt that a homicide was not excusable (i.e., committed by accident or misfortune while doing a lawful act); WPIC 16.01 provides that the prosecution has the burden of proving beyond a reasonable doubt that a homicide was not justifiable (i.e., committed in self defense or defense of others). This is significant in that the defendant need not prove excuse or justification, but need only raise the issue, and then *the burden of proof is on the prosecution to prove the death was not excusable or justifiable*. That's a big deal.

In addition, WPIC 16.07 and WPIC 17.04 provide that a defendant may actually be *mistaken* in believing that he was in danger, as compared to actually being in danger (i.e., *actual danger is not necessary* for a homicide to be justifiable). The belief may not be unreasonable, however. In short, the *facts of the case are viewed from the shoes of a reasonable defendant*, not necessarily from a purely objective view without regard to what the defendant was thinking.

In Washington State, there is *no duty to retreat* from a place you have a right to be at, and *you may stand your ground*. WPIC 16.08.

Finally, Washington law provides that a *defendant may be reimbursed for attorney fees* and lost wages resulting from being charged with an assault or homicide, if a

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majority of jurors (10 out of 12) find that the defendant was acquitted and reasonably believed he was acting in self defense. WPIC 17.06 and Revised Code of Washington (RCW) 9A.16.110. This procedure requires a special verdict after the verdict of acquittal, and also takes an act of the state legislature to approve the funds for reimbursement. The claim for reimbursement must be made before the trial starts, however.

These "pattern" instructions are usually relied upon by the trial judge without change. It is possible, however, to request custom jury instructions where specific facts call for them.

In all, the law and pattern instructions are quite favorable for a defendant charged with assault or homicide, if there are reasons to assert self defense.

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While Maryland may be one of the most rabidly anti-gun states in the Union at least it is strong on self defense from a defendant's perspective. Maryland has a comprehensive set of pattern criminal jury instructions and actually has three for defensive deadly force situations. One for basic self defense using deadly force (Maryland Pattern Jury Instruction 5:07); one for deadly force in defense of others (MPJI 5:01) and finally an instruction for deadly force in defense of habitation (MPJI 5:02). These instructions are supplemental to any other instructions given and spell out all of the elements required in each situation.

The defendant is entitled to have the appropriate self-defense instruction read to the jury in any case where they are charged with an assaultive crime and there is an issue of justification generated by evidence of self defense. The law only requires the defendant to generate "some" evidence of self defense to have the instruction read, so it is a very low burden for the defendant to get an instruction read to the jury in Maryland. Interestingly after the issue of self defense has been raised by the defense the burden then shifts to

the prosecution and they now have to prove beyond a reasonable doubt that one or more of the elements of self defense are not present.

Lastly Maryland also recognizes "imperfect self defense." This doctrine applies in self defense situations involving the question of whether or not the defendant's belief of immediate and imminent bodily harm is reasonable. If found to be reasonable the defendant would be acquitted, however if the defendant's belief is found to be unreasonable, but the other three elements of self defense are present then it is considered imperfect self defense which while not resulting in an acquittal like "perfect" self defense will mitigate certain crimes such as reducing murder to manslaughter.

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Deadly force is a valid defense, but only works (well) in the home. Modified or additional jury charges are negotiated, but the model charges cover much of what is allowed in New Jersey, because we don't have a "right to carry" law.

In addition, Mr. Zohn attached PDFs of the New Jersey model jury charges applicable to the question. Our NJ members are invited to log in to the Network members' section of our website and select the Additional Resources link to access those documents. A big "Thank you!" to Mr. Zohn for providing the additional research.

We deeply appreciate the contributions all of our Affiliated Attorneys make to this column, as well as their other services to Network members. We will introduce a new topic for the March Attorney Question of the Month, so be sure to check back for our next interesting discussion.

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

Book Review

Peoplewatching: The Desmond Morris Guide to Body Language

By Desmond Morris

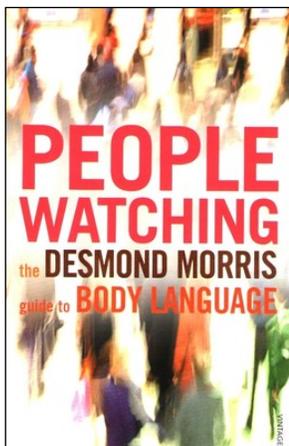
2002 Vintage Books version

Nov. 30, 2012, also

copyrighted as *Manwatching* in 1977, review based on eBook version

http://www.amazon.com/gp/product/B00A0JJVBU/ref=oh_d

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Reviewed by Gila Hayes

Peoplewatching is an older work, but since human behavior is not so much changed as to outdate 45 year old observations, this author's ideas are still valuable, both from the concepts presented in this month's lead article by Dr. Wendy Saxon, but also from the study of violence as we have discussed with leading trainers so often in previous journal issues. Indeed, quite a few terms used evolved from Morris' study into various aspects of human behavior, so wanting to fill in gaps in my understanding, I turned to the original study.

While Dr. Saxon's references are concerned with internal conflict in jurors, I also wanted to learn about unconscious indications known to occur before an attacker initiates violence. While that's only briefly addressed in *Peoplewatching*, I recognize that of the innumerable human exchanges occurring every moment, only a miniscule number are violent. Besides, better understanding other human beings improves our interactions and helps us avoid conflict.

I've read a lot of facile articles and even books about body language and been taught, for example, if someone glances to the right while speaking, they are being untruthful. Heard that one before? Morris explains eye movement and other indications that what is being said is not just tripping off the speaker's tongue.

A glance to the right is not necessarily indicative of lying by either verbal or non-verbal means; it merely reveals inconsistency between what the person wishes you to hear, see or conclude and the speaker's private thoughts, Morris emphasizes, adding that he is not spelling out lie detection cues. Through his commentary,

the reader learns to value being attuned to "body actions [that] do not agree with one another, or with his verbal signals."

Now, I will admit that I became bogged down in Morris' extensive details about gestures, through which the early pages of *Peoplewatching* establish the foundation for later material about contradictory signals and non-verbal leakage. Later, I had the same trouble wading through chapters exclusively concerned with social gaffes. This is a long book, and only a fraction is directly related to physical or legal safety.

I was interested, though, in Morris' detailed descriptions of status displays. In a social context, this has many manifestations from what Morris calls "muted" displays by powerful men in grey flannel, to business posturing, to the displays of the nouveau riche. People also establish and hold status by behavior, assuming roles like the group's joker, flatterer, the incessant talker, or the arguer, Morris defines. Each of the foregoing tries to dominate, just as the use of violence to dominate is another way to establish status, he continues, discussing how violence in muggings or sexual assault allows the perpetrator "if only for a few brief moments, to feel the thrill of violent domination over another human being." Animals also practice sexual dominance displays, but without the "traumatic and brutally damaging assault" suffered in human rape, he adds.

Next Morris discusses territoriality, another topic that should be familiar to students of danger avoidance. He posits that actual territorial violence is rare, and territoriality is primarily played out by gesture and social adjustments, although even the least dominant member of a group may turn violent if his or her home territory is violated. He also studied "high-density groupings," noting that reactions of children at play in crowded areas are more aggressive or destructive than when they are not crowded. "Personal space – 'elbow room' – is a vital commodity for the human animal, and one that cannot be ignored without risking serious trouble," he wrote.

In the chapter *Autonomic Signals*, and subsequent chapters, Morris discusses bodily changes when the sympathetic nervous system prepares for increased demands or when the parasympathetic system is calming and balancing our reactions. Preparation for action by the sympathetic nervous system creates unavoidable visual signals that can reveal the mental state of one who has not yet acted out their thoughts

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and reactions. Internal conflicts, like a desire to lash out physically, are revealed by a red or a pale visage, for example, and, as we have been trained, the paleness likely demonstrates greater readiness to act immediately. I would have enjoyed more of this kind of analysis in *Peoplewatching*.

The author does, however, discuss dilation or constriction of the eyes' pupils, as well as "intention movements" like clenching fists and other pre-assault indicators, though Morris stages his observations in purely social interaction. Still, recognizing anxious or distraction behavior is useful, and his discussion of gestures and actions that indicate building stress is instructive, just as the absence of these normal reactions in someone might be worth our attention, too. In writing about Displacement Activities or Redirected Activities, Morris directly addresses behavior present in assaults. The reader will need to look for the connections, but they are there.

The chapter on what Morris calls Disinterest, Insult and Threat Signals are an opportunity for self-examination to check the messages we send that may incite a reaction

we did not intended to instigate nor for which we are prepared. So much of what we communicate does not come out of our mouths!

A number of interesting but not particularly applicable chapters follow, and the reader with specific interest from the aspect of legal armed defense can probably safely skip the interesting but nonessential chapters before the one on mega signals, which brings the reader back to reading the non-verbal communications of fellow humans, some of whom may intend to harm or victimize.

I am always interested in the foundations of terms and ideas currently used to teach self defense or assault prevention. Reading *Peoplewatching* was interesting and now, when instructors adapt Morris' concepts to self-defense instruction, I'll better understand the origin of the terms and principles.

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



Networking

by Brady Wright

It seems like the first month of 2014 just FLEW by and I can't believe we are already headed for longer days, and that means more range time! By the time you read this, everyone will have returned from SHOT Show

(<http://www.shotshow.org/>) and have visions of all the new cool stuff they will be putting on their wish lists. I got several emails and Facebook posts about the new Crye Precision Six12 rail gun, and several more about the new backpackers' hand cannon from Smith and Wesson in .460...with a three inch barrel! I'll leave you thinking about that one.

Several of our affiliated instructors are doing variations on the use of deadly force scenario classes, as well as women and concealment training sessions. These are becoming almost bread and butter for a lot of schools and training outfits across the country. I'm seeing more and more of the live fire transition courses too. Steve Eichelberger and David Conatser are just two of the many who are sending me their class schedules. Since there's not room for the entire listings contact Steve at FirearmsInstructor1@gmail.com or visit at his website www.firearmsinstructor.us for Salem, OR area classes. Contact David at davidconatser@mac.com for details on his KY area programs.

One of the topics of many of the calls that came in lately has been gun safes. It's just smart business to have the biggest safe you can afford and keep the guns that aren't on your person locked up if at all possible. We all know the investment that goes into our collections and just the accessories alone (holsters, mag pouches, belts, flashlights, optics and other 'gotta haves') can run nearly the same as the guns themselves. Don't get me started on ammo costs and reloading gear! With that to think about, I probably get at least three or four calls or emails a month about safes and other secret lockup ideas. For about the price of one quality gun, you can have a good fire resistant safe that protects your weapons.

Jim Hickey is one of our more prolific affiliates who does a great deal of instruction for several outfits. His main company is NLB-Training, which is focused on providing exceptional training for firearms, first aid, and related safety topics at both the basic and advanced levels. The programs are instructed and managed by a team certified by the NRA and/or ASHI in specific disciplines. Most of Jim's training is at West Coast Armory North in Everett, WA, previously known as Sam's Gun Shop. In addition to their basic course, advanced firearm training is provided by Usus Training and the basic NRA classes are now offered through Pacific Firearms Training. It's all under one electronic roof at www.nlb-training.com.

If you are interested or deep into the whole survival-prepper dynamic, here is a shout out to Jack Spirko, who hosts the Survival Podcast. He and his group cover so many topics that it's impossible to think you wouldn't find one that speaks to your interests. Their website is www.thesurvivalpodcast.com.

Finally, for those who haunt the Network's own Facebook page, I note that we are at almost 1700 participants there. The page is pretty good at giving those folks from the general public who may not yet be Network members, a place to see what we are about and to join in the discussion of topics that relate to our mission. There is no way to tell if a poster there is actually a Network member, unless you happen to know them or if it is me or Marty, Gila Vincent or Jennie. If you happen to be on that site, it's OK to welcome those folks and be courteous and respectful, of course. It's a good way to add to Network membership when folks see how professional our members can be. I am always proud of the way we treat guests and if they see something they like then join the Network, that just makes the entire Network stronger.

As usual, if you need any materials to give to clients or customers, call or email me at brady@armedcitizensnetwork.org especially if you have news to share, or know of a win we should celebrate.

More to come next month. Stay safe out there!

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

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Editor's Notebook

Teach Your Family About Police Interaction

by Gila Hayes

I've been thinking about the Florida concealed handgun licensee who got a lot of undesired

attention from the Maryland Transportation Authority Police last month. Without any chance of MD to FL license reciprocity, the motorist had left his gun at home, but that did not prevent the transit officer from rummaging through their belongings, probing the car's engine compartment and door panels and even patting down the motorist's teenaged daughters, looking for that pesky gun.

I won't detail what happened; that sordid story with its many implications about vanishing liberties is fully explored at a link I will give you at the end of this column. First, though, let's consider how the unfortunate incident might have been avoided or at least mitigated.

The story goes that the armed citizen was driving through MD, apparently keeping pace with other fast-moving traffic, because we're told that he was warned for driving 71 mph in a 55 mph zone. After the initial contact (you know, the part where you surrender your registration, license, and proof of insurance), the MTAP officer asks the motorist to get out of the car where he says, "You own a gun. Where is it?" and the motorist answers, "At home in my safe."

Ordered to stay put, the motorist waits while the officer goes to the passenger's window and asks, "Your husband owns a gun. Where is it?" The wife responds that she does not know, adding gratuitously that perhaps it can be found in the center console or the glove box. She further explains that she's scared of that gun, fears shooting herself with it, and wants nothing to do with it.

Returning to the waiting motorist, the officer accuses, "You're a liar. You're lying to me. Your family says you have it. Where is the gun? Tell me where it is and we can resolve this right now." The motorist can only repeat

that there is no gun in the car, a fact that the officer feels compelled to prove so the search ensues.

We can never know if the search would have been so extensive without the wife's comments. We do know that police question family members and others who are present at investigations so armed citizens need to teach family members about police interactions. This may prevent a situation similar to the motorist's, but more importantly, your larger effort can turn your family into a unified team for the defense of the whole family.

Failing to unify the family on vital issues can result in a hostile family member, like the motorist's wife, who obviously was not comfortable with her husband's gun, and chose a bad time to vent her emotions. A family dis-unified over so elemental a concern as defense has serious problems. Here we have room only to troubleshoot a few; the concerned reader will undoubtedly think of more.

First, the armed citizen's family desperately needs proof that their armed family member will behave safely and judiciously with deadly weapons. Likewise, they need assurances that their armed family member fully understands and has a legal and morally justifiable strategy for using deadly force in self defense. Consider a shared viewing of the Network's #1 DVD, *Use of Deadly Force in Self Defense*, or offer a short verbal synopsis and let family members ask questions and explore their fears.

How effectively can a team work if only one member knows the strategy? Family members must know the lengths you will go to avoid a confrontation, what to do if you are involved in a brewing incident or a full-blown attack, and understand that you will only use your gun if no other alternatives exist to prevent death or serious injury. Explain that they must never reveal you are armed or even own a gun, to friends, authorities or strangers.

The motorist's wife later observed that she should have simply said she did not know the location of the motorist's gun. Truer words were never spoken! Who knows? Had this couple developed a shared strategy toward family defense, perhaps the motorist would have told his wife he was leaving the gun at home when

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driving through MD, a state that is hostile to armed citizens. If they had faced danger on the trip, knowing her spouse's defensive capabilities could have been extremely important.

2 Corinthians 6:14 (KJV) advises, "Be ye not unequally yoked together with unbelievers" and while it's safe to assume that the apostle Paul was warning Christians not to get hooked up with people of different beliefs, this time-proven adage addresses our concerns perfectly. Armed citizens who share their lives with people who fear or hate guns must work tirelessly to forge bonds of understanding to prevent trouble, of which the distress of the motorist is merely one possible example.

People hate and fear that which they do not understand. Explain by word and picture the safe function of your firearm, and never, ever, EVER let your family see you do anything unsafe with firearms. In other words, do not give them any reason for fear.

Trade something the gun-hostile family member badly desires for their participation in an introductory trip to the range. Be sure they wear hearing protection and eye protection, and introduce them to firearms function with a .22 LR of similar function to the gun they most often see with you. Clearly explain exactly how the gun functions, then demonstrate dry fire with Snap-Caps or the equivalent. If they are willing, have them dry fire;

move into live fire only after safely demonstrating it yourself. By observation, their fears may be put to allayed; by going hands-on, they experience the victory of overcoming their fears.

Keep the introduction to guns short and end it by teaching how to safely unload the gun, using those Snap-Caps or other dummy rounds. If the .22 pistol used for their introductory training is substantially different from your daily carry gun, demonstrate safely unloading the gun you carry most often, or the one with which they are most likely to come into contact. Your emphasis on safety and the steps of using a gun safely, strip firearms of the power to induce mindless fear.

As promised, here's a link to the entire story: <http://tbo.com/list/columns-tjackson/jackson-gun-owner-unarmed-unwelcome-in-maryland-20140112/>. A number of questions about a citizen's right to privacy are raised, and the comments section provides very engrossing reading, too. Reversing government intrusion into our lives is a long-term campaign. On the other hand, armed citizens can make an immediate positive change by unifying their families.

*[End of February 2014 eJournal.
Please return next month for our March 2014 edition.]*

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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:

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