



# Firearms Training: Then and Now

## *An Interview with John Farnam*

*As armed citizens celebrate favorable laws recognizing concealed carry of self-defense firearms, we sometimes wonder, has self-defense training kept up with the times? What are the training needs of those joining the ranks of armed citizenry today?*

*Evaluating progress is impossible without a sense of where a movement started. Many training luminaries have come and gone, but few can match the “years in service” and still continue to participate as enthusiastically as firearms instructor John Farnam! If anyone is qualified to evaluate our progress in self-defense training, it is surely Farnam.*

*Farnam maintains a grueling schedule and still finds time to shape opinion through his D.T.I. Quips (<http://defense-training.com/dti/quips/>) and by generous contributions of his time and knowledge, like the influence he extends as a member of the Network's Advisory Board (<http://armedcitizensnetwork.org/defense-fund/advisory-board>).*

*Earlier this year in January, we were privileged to spend time with John talking about the self-defense industry from a “then and now” perspective. The conversation was so interesting that we want to share it with you in John's own words.*

**eJournal:** You have dedicated many, many years to this industry, John. We'd like to better understand where we are today by comparing training when you started out in the '70s. But first, how did you get started as a firearms instructor?

**Farnam:** In 1967, I graduated from college with a degree in biology and chemistry, but there was a war going on, and somehow I knew I had to be in it. A couple months later, I found myself in Quantico, VA instead of graduate school and then a few months after that, I found myself in Vietnam as a young second lieutenant. I was there for 51 days and on my 51st day, I got my third purple heart.

I was shot through my hand and so they shipped me home. Most of my colleagues died. I think 75% of my OCS class died and we were all wounded. I know guys who have five purple hearts; I only have three. It has always haunted me all these years. Why did I, the least qualified of all, live through it when all my friends didn't?

When I got back I was bewildered and angry, because I thought our small arms training was poor. Even at the time I knew that. I thought our trainers didn't know anything. They were a bunch of target shooters who didn't even carry guns.

After working in the family business for a little while, I became a police officer and I went through the whole thing all over again, except now, I had some experience. When I went through the police academy, our trainers knew less than I did. I suppose it is easy for me to be judgmental, but the whole body of knowledge that we possess today didn't even exist back then.

Even as a new police officer, I decided that what was being taught officers had not kept up. I thought, I can do better than this, so I started consulting. That quickly became full time and I started running around the country working with police departments.

I bought a target system called a Duelatron and that became something of my calling card. Of course, I starved to death, but I was too stubborn to admit that I was wrong! I knew this was something that I was born to do. As you know, because you have been my student, I am more of an evangelist than an instructor.

**eJournal:** At that time, the norm was to stand exposed on the 25-yard line, shoot, reload and shoot again. You must have shaken that up with your Duelatron drills and your conviction that training for real life needed to be more dynamic. How did you come to that realization?

**Farnam:** I talked to too many of my fellow officers who told me, “Our training is a joke. We come here, we get our ticket punched, and we go back out to work. We go

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through the motions, but nothing's happening." I decided nothing through the public sector would ever improve training; it would have to happen in the private sector.

**eJournal:** How did you go about educating yourself in how it could be done better?

**Farnam:** Gunsite was about the only game in town at that time. Chuck Taylor was a good friend and he and his wife were very gracious and let me stay in their trailer because, of course, I couldn't afford a hotel.

Jeff Cooper was quite a pioneer. He was innovative enough to start running a hot range, which I adopted immediately. I said, it is silly that we do it any other way. At the time, a hot range was considered a radical departure. Now it is fairly well accepted. Now we are at the next barrier when we run rifles the same way.

The world is coming around. I like to think I'm on the leading edge. I'm 68 years old now. I've lived long enough to see a lot of instructors come and go. I've lived long enough to see a lot of techniques and a lot of the other nonsense that we all lived through. It is astonishing to me that there are still philosophical overlays that are 50 years out of date that are still being taught today!

**eJournal:** For example?

**Farnam:** Pat Troy, one of my instructors and good friends from the D.C. area, who does a lot of the instructing there, just went through a course with an instructor I've not met but have heard the name. Pat was asking questions, and he asked, "How do you teach going to a back up gun?" The instructor said, "Oh, we don't believe in back up guns." Pat said, "Well, that's funny! I don't believe in earthquakes. I don't think earthquakes give a damn whether I believe in them or not!"

"Oh, no," the man said, "back up guns are just too dangerous. We don't believe in them." Well, to me, he's a coward and a disgrace to our profession, because he's so worried about himself and his bottom line that he does not consider advancing the art. He just concerns himself with making a living.

Well, I'm sorry! We all have to persuade people to write us checks so we can eat regularly, but we also have to advance the art. We have to be brave enough to make innovations and do stuff in the face of a lot of people who aren't quite sure.

**eJournal:** What other rules impede progress?

**Farnam:** Cold ranges. In law enforcement, hot ranges are fairly well accepted for pistol, but not on the military ranges! For several years in a row, I did courses up at Camp Pendleton. I had a little cadre of instructors who were there each year, despite the rotation that happens at a military base. I'd come back and ask, "Are you guys running hot ranges now?" They'd say, "Uh...we do when you are here, because you have to understand, they are afraid of you, but they sure as hell are not afraid of us."

We ran hot ranges and certain units that have some political autonomy run hot ranges, but the kids that really need it don't get to train on hot ranges. Like in the police business, we lavish all this money on SWAT to buy equipment for the last ones to need it. The guy who needs the gear or training is that plain vanilla patrolman that's out there by himself in a patrol car responding to calls. He is the one who needs it and he's the one that no one cares about!

That patrolman goes to training twice a year and he gets his ticket punched and he figures, well, they don't care, why should I care either? We pressure him, and ask, "Well, if you get killed, is the Chief of Police going to cry? Is anybody going to care? You must not expect other people to care about your well-being more than you do!" Never expect the public sector to do anything but the minimum to keep their pathetic jobs!

**eJournal:** Where have we made progress? What about moving either before or while shooting?

**Farnam:** We teach that movement is very important, especially lateral movement. Rarely is that required in any kind of training and I don't think it is ever in any qualification. They stand there and shoot, they stand there and reload, they stand there and reholster. I have often commented, "How dumb can you get? Why are we doing this?"

**eJournal:** Of course, you know what it is like to be shot; many do not. When did you start integrating movement?

**Farnam:** Probably in the late 1970s.

**eJournal:** What made you think mixing movement with firearms training is important?

**Farnam:** I started getting a lot of martial artists in classes. Some are used to the concept they call body

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displacement where they sometimes just make a very slight movement to watch the punch go by their head instead of being hit.

Now, this is interesting: that idea goes back to the 1800s! The gunman Hardin was a practitioner of the idea of body displacement and he wrote about it on several occasions, but they didn't call it that in those days. We're not discovering anything new; we just keep relearning what others already knew.

I decided that we have to practice body displacement. I became pretty aggressive with it and required movement of my students.

**eJournal:** We are seeing movement taught more these days, but there are differences in technique. What is your concept—movement before pressing the trigger or firing and moving simultaneously?

**Farnam:** We have to be able to do it all! It is like learning to play the game of golf. You can't just concentrate on your drives and ignore your putting. You will win on drives, but lose the game on short shots. You have to be strong in all areas, and you have to be strong simultaneously.

In shooting, it is not just stance, and it is not just grip, and it is not just trigger, you have to do all that at the same time. You have to learn how to run a trigger, and you have to learn how to run a set of sights, and learn, for lack of a better term, about relativity.

**eJournal:** What's the role of relativity in armed self defense?

**Farnam:** Well, I like to be accurate. Don't we all?

**eJournal:** How do you define "accurate?"

**Farnam:** That is like asking how do you define "fair?" Accurate how? You know, we teach an area target. We don't teach people to shoot groups like this [makes a small circle with fingers]. No, we teach an area target. It's a rectangle here [his fingers outline approximately 8 x 12 on his upper chest]. It's an area target. I don't care if you hit the edge or hit the middle, but you will miss completely if you go too fast—and that is what most people do. They go too fast. If I can use casino parlance, going too fast is like hitting a 17. You say, "I know that next card is a four! I just know it." Well, sometimes it is.

Jeff Chudwin is fond of saying, "Never let good luck reinforce bad tactics." Sometimes when we get a good result, we think it must be because we are geniuses. At the poker table, we have this expression: "Don't mistake good cards for brains." You know, good results don't demonstrate good play. Good play will generate good results more often than poor play, but even poor players catch lucky sometimes.

Sometimes, someone will catch lucky and then base a whole training program on something that only happened once! I am thinking of the guy who tripped, fell backwards, shot through his knees, killed the bad guy and they incorporated that technique into their training program. It had never happened before and it has not happened since! But it happened that one time! [laughing] Well, that's silly, and shortsighted.

**eJournal:** Realistically, we have to choose between recklessness and excessive caution.

**Farnam:** For example, we can be too fast and miss. In cards, that's like hitting on 17. Well, we can be too slow, too. We can be too accurate. That's like standing on 11. Why would you stand on an 11; you can't possibly hurt yourself! Take a hit! You say, "Oh, but, I'm so afraid!" Well, it is the same problem. We have to find that Goldilocks zone—just right.

In poker playing and in shooting, we spend too much time talking about lucky shots. I tell my students, using a poker analogy, you have to play your game as if luck has nothing to do with it. You have to win on skill alone, because that's the way it really is.

The problem is, you can win and lose at poker a thousand times in one evening, and you can learn that lesson. How many times do you get to get killed? None of us have all these experiences. Someone says, "I've been involved in 52 gunfights!" Well, with all due respect, that's bullshit because you'd be dead.

**eJournal:** Let me ask another "then and now" question: How are gun owners doing in terms of the consistent practice of gun safety?

**Farnam:** There is no doubt that we have made progress. However, 75% of gun shot wounds are self-inflicted accidents. I would like to think none of those were my students. Obviously, either directly or through proxy, we did not get to those people.

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I've had a couple of ADs (accidental discharges) in my life. Not recently, but when I was a young student and didn't know what I know now. The body of knowledge that we teach now didn't even exist!

**eJournal:** What hadn't we learned yet in the 70s?

**Farnam:** Muzzle consciousness and trigger fingers [mimes holding a gun with trigger finger far away from imagined trigger guard]. While that is the main part, I think that teaching a routine [mimes precise steps to bring gun down off target, trigger finger straight, to compressed high ready, to low ready, to holster]. Instead of "Oh! I'm glad that is over!" [Mimes swinging gun dramatically off target toward feet.]

How many times have you heard me say, "You don't get to relax!" After you holster, you can at least take a breath, but I want that safety routine all the way through, every time. You're not pointing guns at yourself; you're not pointing guns at other people. We have no safe guns here. All guns here are always dangerous.

Now, one step forward in that regard, when we actually need to demonstrate careless gun handling, we now use blue guns. I can use a blue gun to deliberately be unsafe because it is not a gun, it is a piece of plastic molded into the shape of a gun so I can make the point. It would be a little hypocritical for me to take a functional gun and wave it around and say, "Don't do this!"

People used to demonstrate what not to do with functional guns. They'd say, "See, the gun's unloaded. Now, don't do this!" That was then. Well, now we do not do that. Blue guns are available, they are not expensive, and why should we not use them?

**eJournal:** That's a great example of improving safety protocols.

**Farnam:** The world is full of ignorance and the progress is glacial, but statistically, accidental shooting injuries are down measurably, due to hopefully some of what we are doing, but also due to gun technology. Today, guns really are about as safe as they can be made.

Back in the last century when the only guns were muzzleloaders, you couldn't unload them. In fact, modern-day re-enactors who use muzzleloaders, use a device called a de-loader. It is a compressed gas that actually blows the powder charge out. I still wouldn't stand in front of it, but at least it de-loads it. There was no such thing 100 years ago. You couldn't unload a

muzzleloader without shooting it. Then, you wouldn't have time to load it when you needed it, so it just stayed loaded. On the wagon trains, for example, there were terrible accidents! No one kept track of statistics on that, but I am convinced that it was terrible compared to today.

Today, the guns are much better. They are drop-safe and the triggers are safer—no one makes a utility gun with a one-pound trigger. For pistols, the industry standard now is six to seven pounds, and I think that is about right.

Back in the revolver days, which I am old enough to remember, our revolvers had 12 to 14 pound triggers and we thought nothing of it. On the other hand, we didn't have women officers and we didn't have any small-statured people in law enforcement. We had height and weight limits back in those days!

If we went back to revolvers today, that would be a problem. I have small-statured students—not just females—who would have to use two fingers to press the trigger. In fact, I have had students do that. There are drawbacks, but if that is what you have to do to shoot the gun, then you have to do it that way. For most consumers, the six to seven pound trigger is about right.

Except for 1911s, manual safeties are gone. If you manufacture a gun with a manual safety or a decocking lever, you are not going to give it away to a police department. They won't even look at it. The system that Glock pioneered has been pretty much adopted by everybody now. The gun is self-decocking; the gun does everything for you. You do have to load it, of course, but you do not have to do anything with the hammer. There's no button here; there is no lever there. You do not have to worry about any of that.

The guns we have today and the choice of guns we have today are vastly superior. Number one, in capacity. I carried a six-shooter around for several years with 158 grain, flat nosed lead bullets, I think they strained to make 500 feet per second [chuckling]; you could about see them go down range. I had no speed loaders, no speed strips, none of that. I had dump pouches that would dump your rounds on the ground—that is why they were called that.

We were taught if you don't have time, just press the trigger, but if you have time, cock the hammer first. Well, of course, every time we did that, we had an accidental discharge so we soon learned, "Uh, in this department,

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we are NOT doing that!" Now, the hammers are gone, so it is a moot point.

And now, I am carrying a 16-shooter, with this high-tech, high-performance ammunition that's as effective as any pistol ammo could be, and NONE of that was available back then.

**eJournal:** And what about the threats we train to counter? Has time increased the dangers individuals face?

**Farnam:** I have to think that the threats we face have changed a lot, although I am not sure I am prepared to tell you why. All I know is, when I was even in my twenties, there was no such thing as school shootings. If you wrote about that, it would be a book of fantasy. That would be like writing about life on Mars.

So, how did these things start happening? Did people suddenly go crazy? Honestly, I don't know. I do not know. Maybe it is chemical; maybe it is societal; maybe it is symptomatic of a declining civilization.

**eJournal:** Of the less dramatic crimes, we still have robberies and bar fights, for example, so do you think at the interpersonal level, predictable dangers have escalated?

**Farnam:** Well, we still have youth gangs, but remember watching West Side Story? The gang members in it dressed better than most of us do when we go to church! That was the idea of a youth gang at one time. Today, a lot of gangs are ethnic and extremely vicious. We have now people who think that people of other ethnicities are essentially disposable. I think that is a relatively recent phenomenon and I am not sure I am prepared to explain why.

I do think that we are in a declining civilization and these things are symptomatic. The nation is hopelessly in debt, we are past the point of any chance that our debt could ever be repaid. Repayment is now a moot point. It is impossible, so what does that mean? It means we are headed toward a situation like Greece. This is something that nobody talks about but everybody knows. How does that affect the way we do things every day? Well, the effect on some people, I think, is that they become violent.

**eJournal:** How does this affect preparation-minded peoples' decision making? How should we prioritize what we need to do?

**Farnam:** I think we need to be armed all the time. You have heard me say this before, I carry a gun all the time. I don't care who likes it, I don't care whose rules I violate. I could not care less. My life is important enough to me to where I am just going to be armed all the time. I think we have to carry high-capacity guns. I want a 14-shooter if I get in a fight.

There was just recently a school shooting in a state near the one in which my youngest son lives. He carries a Kel Tec .380 in a Gregg Garrett neck holster under his surgical scrubs. He told me, "I'm thinking about getting something more powerful." He commented that he now thought that he and his wife needed to be armed all of the time. He said, "Dad, you've been harping on this all along, but I see now that I have been blind." Well, that is repentance. That is an epiphany and that is wonderful.

**eJournal:** That is a personal experience we just had when we sent my oldest nephew a box of Glock holsters because he has taken several of our courses and bought his first carry gun. He has finally made the commitment and we could not be more proud.

**Farnam:** How many other people do you suppose are having the same epiphany? Some fraction of one percent of the population? But that is a lot of people. We are not going to reach all of the people, but there are some who we can help and by God, that is a lot of people. When I have people come to me with checks in their hands saying, "I want to learn this stuff," I can say, "OK, you came to the right place. We will work with you." Maybe they say, "Well, I'm paraplegic, I can't do..." and I say, "We'll work around it!"

**eJournal:** I'd say, "God bless you, you are thinking right!" And in the next breath, I'd say, "God bless John Farnam," because you have enhanced the Art so far, in our thinking, in our skill development, and in our preparation to take better care of our own safety and that of our families. Thank you!

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

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## President's Message

by Marty Hayes, J.D.

I received word that Network Advisory Board Member Dennis Tueller's son, Dan Tueller, was recently shot while on duty for the Salt Lake City Police Department. According to Dennis, Dan was shot in the leg

by an armed aggressor and is currently in the hospital, having suffered a very serious wound.

Apparently he and another officer were on a traffic stop when they were fired upon by one of the occupants of the car. The two officers, both of whom sustained gunshot injuries, returned fire and killed the criminal perpetrator after being shot. Dennis reports that his son will be laid up for quite a while, unable to work and while he will be receiving his base salary, it will still be difficult to support his family due to his inability to earn extra money.

I would like to think that we, the members of the Network, will step up to help take care of our own, and so I am alerting you to a fund raising effort to help Dan meet his financial obligations while he heals. \$10 or \$20 bucks each from a thousand people would be a real help to these young men and their families. Here is a link to the news story <http://fox13now.com/2014/03/28/2-police-officers-hurt-1-man-dead->

[after-salt-lake-city-shooting/](http://slcsheepdogs.org/), and here's a link <http://slcsheepdogs.org/> to the fund raising site. If you can spare a few dollars, then that would be great.

## A Girl and A Gun Conference

As I wrote last month's *eJournal* column, I was attending A Girl and A Gun conference to give a legal presentation. I am happy to report that the conference was very well attended and the ladies who sat in on my two-hour presentation on how to reduce the likelihood of being convicted of a crime following an act of self defense were appreciative of the information. What I took away from the experience was a very positive feeling of hope for the future of armed America. Just a few years ago, a conference such as this would have never taken place, as those females who took their safety seriously enough to carry guns were few and far between. This demographic is changing though, and A Girl and A Gun is evidence of that. I promised you some pictures, so here are several.

*Top left: Julianna Crowder welcomes the group. Center: Hayes teaches at the conference. Bottom: Nikki Turpeaux speaking at the opening session.*



Of humble beginnings come great things. I can envision the founders of the National Rifle Association sitting around a campfire back in 1871 saying to themselves, "Let's start this little club to help teach people how to shoot more accurately." A Girl and a Gun started not too long ago, and I would be pleased to see it grow into a prominent force in women's shooting circles. People interested in learning more can visit their website at <http://www.agirlandagunclub.com/>

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### Member Requests More Information

After reading last month's lead article *Meet Your Legal Defense Team* one of our members asked how much money it would cost to field the entire legal defense team I described. While I have my own estimates, I thought it might be fun to ask our attorneys to make their own estimates. So, here is what we are going to do: attorneys, please fill in the blanks in the list below and email it to me [MHayes@armedcitizensnetwork.org](mailto:MHayes@armedcitizensnetwork.org). Let's see if we can come to a consensus on the actual cost of a legal defense as outlined last month.

- Lead Attorney \_\_\_\_\_
- 2nd Attorney \_\_\_\_\_
- Investigator \_\_\_\_\_
- Paralegal \_\_\_\_\_
- Legal Assistant \_\_\_\_\_
- Jury Consultant \_\_\_\_\_
- Shooting Incident \_\_\_\_\_
- Reconstruction expert \_\_\_\_\_
- Firearms expert \_\_\_\_\_
- Forensic Pathologist \_\_\_\_\_

### Puffery in Advertising

One of the first cases one studies in law school is *Carlill v. Carbolic Smoke Ball Company*. This case centered on an advertiser making outlandish claims about their product, which ultimately were proven not to be the case. Google Carbolic Smoke Ball for the complete story. This is where the term "puffery" in advertising came from.

I absolutely abhor the practice of businesses making claims such as "the best," the "pinnacle," "none better," etc. The reason I bring this up in my

monthly column, is that I was recently made aware of one of our competitors claiming the following:

*"If our members are involved in a use of force incident we provide the best defense attorneys in the U.S."*

Really? The best? Can I have Gerry Spence? If I can't have Gerry Spence, then who is better? In other words, those claims are pure puffery, because no one can legitimately claim he or she is the best defense attorney, because the claim cannot be qualified. And then to claim they will provide the best defense attorneys in the U.S.? Wow, that is a pretty amazing claim. When I see claims like this, I ask myself how can I trust anything else they might say? Is their whole program just smoke and mirrors, like their advertising?

We keep getting requests for us to compare what we do to those other companies. I guess we will have to oblige, although I certainly have more important things to do. But one reason to go down this path arises when other companies either make claims about their own services that are at best viewed as puffery, and/or they make claims about the Network that are just as untrue. So, at some point, I will make the comparisons. Until then, rest assured that whatever we say in our advertising is the 100% truth, with no puffery. Besides, I can't help but think all that smoke is bad for you.

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

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## Attorney Question Of The Month

Network President Marty Hayes asked our Affiliated Attorneys a short series of questions about fairness in our criminal justice system in this column last month. We received so many interesting responses that the topic was continued over to this month. Here is what we asked—

*1) In your career as a defense attorney, how often have you seen prosecutors engage in misconduct in order to gain an unfair conviction?*

*2) How often do the judges either look the other way or assist the prosecution?*

*3) What is the penalty for either of the above?*

Our Affiliated Attorneys' responses follow—

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After having practiced law for 39 years, let me offer my observations to your Brady questions:

1) Far too many times, unfortunately. And as the seriousness of the crime increases, so do the convolutions of some prosecutors to “win at any cost.” Consider the cases of former Senator Ted Stevens [conviction set aside because of Brady violations]; the so-called “Detroit Sleeper Cell [convictions set aside and indictments dismissed for Brady violations]; the guy recently exonerated in Texas and the former DA, then judge who was disbarred for withholding evidence in a murder case. I personally have two post-conviction homicide cases where we know that crucial Brady information was “hidden” from the defense – the issue is, what is the appropriate remedy for those violations?

2) I must unfortunately say, that with the exception of a few federal judges [remember, life-time appointments, so they don't stand for re-election], 95% of the judges either “poo-poo” the issue, hold that it is “harmless error,” or usurp the role of the jury and conclude that it wouldn't

have mattered in any event. But, that call is mine as the defense counsel – I cannot use what I've been lied about and told does not exist. If judges would actually sanction overzealous and unethical prosecutors and order new trials for Brady violations, word would spread, and it would reduce, but probably not eliminate, the problem.

3) Virtually nothing ever! At worst, a Judge yells at a DA and tells him to “be more careful in the future,” or an appellate court rules that the Brady violation is “harmless error,” and thus, no big deal. With the exception of the prosecutors in the Senator Stevens' case who were referred for an ethics violation investigation [the exception, rather than the rule], or the Michael Morton exoneration in Texas late last year where the DA who went on to become judge, went to jail, the Brady rule is the proverbial “paper tiger.”  
<http://www.cnn.com/2013/12/04/justice/exonerated-prisoner-update-michael-morton>

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In 25 years of practice, I have seen it twice, at least egregiously. Both were murder cases. The first time involved the prosecutor manipulating the discovery so that it was largely unusable without countless hours of staff time sorting it and reorganizing it. Second time was a plea agreement with a codefendant cut in the middle of trial, and not disclosed to the Court or defense counsel until after the codefendant had testified on behalf of the state against my client.

The Judge was not complicit in the misconduct in any way in either case.

The prosecutor in the first case was publicly censured by the disciplinary administrator. The second case is currently on appeal.

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*1. In your career as a defense attorney, how often have you seen prosecutors engage in misconduct in order to gain an unfair conviction?*

The answer depends largely upon how you define misconduct. Prosecutorial misconduct is seen primarily as a procedural defense used by defendants to argue that although they may have violated the law, they should not be held criminally liable because the prosecution acted in an unfair manner. Such arguments may involve allegations that the prosecution withheld evidence or knowingly permitted false testimony. Or, it can be much more simple such as “the state engaged in prosecutorial misconduct when it (1) asked questions that were directed at the defendant’s presence at the trial and his ability to tailor his testimony based on the evidence presented prior to his own testimony; (2) questioned the defendant about his pretrial silence and his right to counsel; (3) asked the defendant a series of “Are they lying?” questions when the defendant did not put the witnesses’ credibility in central focus; and (4) engaged in a series of remarks that diverted the jury’s attention from issues relating to the defendant’s guilt or innocence.” Misconduct of this lesser sort happens quite a bit.

Modernly, the courts are much more likely to find that “a new trial is not warranted because the objected-to misconduct was harmless error and the unobjected-to misconduct did not affect the defendant’s substantial rights.”

However, prosecutors are protected from civil liability even when they knowingly and maliciously break the law in order to secure convictions. Sometimes, such as the Duke Lacrosse case, the prosecutor’s action were so egregious that the prosecutor (Nifong) was later disciplined and disbarred, and he deserved it given the circumstances of his misconduct.

*2. How often do the judges either look the other way or assist the prosecution?*

I have seen very little of that in situations so blatant that it was easy to spot. Lots of accusations get made, very seldom does it ever amount to anything. And accusing a

Judge of complicity in misconduct is a really, really serious accusation.

*3. What is the penalty for either of the above?*

Penalties vary widely, depending upon the circumstances. The courts are increasingly using an outcome determinative analysis as an excuse to overlook plain error. Yes, it happened, but did it really change anything in terms of the outcome of the case? Lots and lots of appeals are denied these days, using this analysis. “Yes, there was error, but we don’t think it changed anything.” So, the penalties, depending upon the situation may range from nothing, to disbarment, with mistrial landing somewhere in the middle.

There is the way things should be, and there is the way things are. Don’t get confused as to which is which. Courtrooms are a really excellent place for good citizens to stay out of. Particularly those citizens who love to start a conversation about “the law” with “I know what the Constitution says . . .”

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I’ve recently retired so I can give you forty years experience in Florida. As a rule, prosecutors are ethical, and stick to most of the rules. Occasionally, they will make discovery more difficult, but the only thing I’ve noticed over the years is that litigants on both sides try to “surprise” the other side with their case cites for the day of the hearing, even when it’s been scheduled for weeks or months. That’s totally unethical from either side, as far as I’m concerned—and judges rarely say anything no matter who plays that game.

Likewise, some judges have a reputation for “slamming” anyone who takes a case to trial, or insists on doing full discovery depositions and motions. The rest are generally fair, although most will give the “benefit of the doubt” to the State on factual disputes—and the same thing on novel issues, or issues that are controverted on the law.

The Zimmerman case, in my opinion, was an example of prosecutors who had a political agenda, and played

*Continued...*

games with the defense. Likewise, it was a good example of a judge who was in a rush to get the trial done before the case was ready. That's a common problem with many criminal court judges. However, overall, the practice is fair, and so are the attorneys and judges. Of course, some areas of Florida are more political than others, and how your attorney is viewed by judges and the State can be important in how a case is resolved.

**John H. Carney**

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I had it happen to me, one of your lawyers...Brady violations characterized as "egregious" by The United States Court of Appeals for the Fifth Circuit. Spent thirteen months in a Federal prison waiting for the Fifth Circuit Court to rule. Reversed and remanded, retried in another four week criminal trial and acquitted.

Process took four years of my life and \$500,000 in fees and expenses and they took my bank I had spent six years building.

106 F.3d 622 (1997)  
UNITED STATES of America, Plaintiff-  
Appellee, v. James R. FISHER and John H. Carney,  
Defendants-Appellants.  
United States Court of Appeals, Fifth Circuit.  
February 13, 1997.

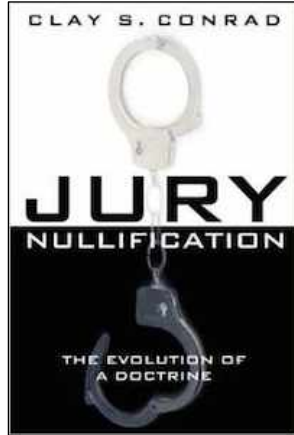
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*A big "Thank you!" to all the Network Affiliated Attorneys for their fascinating responses to this question! Watch for our Affiliated Attorneys' opinions about a new topic in the June edition of this journal. We deeply appreciate the contributions all of our Affiliated Attorneys make to this column, as well as their other services to Network members.*

## Book Review

### Jury Nullification: The Evolution of a Doctrine

by Clay S. Conrad  
 Publisher: Cato Institute,  
 November 7, 2013  
 ISBN-13: 978-1939709004  
 \$24.95, hardcover, 300 pages



*Reviewed by Gila Hayes*

Texas Attorney Clay S. Conrad and the Cato Institute draw back the curtain on jury nullification of the law, a topic about which little is spoken in legal circles. My interest was piqued a few years ago after being advised by an attorney that a defense lawyer opining publicly about jury independence risked irreparably harming his or her ability to effectively defend clients because the courts so strongly oppose independent verdicts. Internet information about jury nullification proved terribly politicized, so I was grateful when I discovered this book and its historical perspective.

Author Clay Conrad starts his book by describing pre-Magna Carta panels called upon to determine the truth of criminal accusations. As English jurisprudence evolved, early juries devised ways to bypass unjust laws. Those early juries refused to convict on violations of unpopular laws against libel, treason and religious freedom. Intrusive government followed the colonists across the ocean, Conrad relates, and in America as early as 1734 the Crown arrested a German immigrant in New York for publishing seditious libel. Andrew Hamilton defended him, arguing, "I know they [jurors] have the right, beyond all dispute, to determine both the law and the fact."

Nearly three hundred years later, attorneys are still jousting with the courts about whether a jury is empowered only to determine "guilty" or "not guilty" or if it is within their purview to judge the law itself. This question is the repeating theme and common thread woven throughout this entire, lengthy book. While Conrad has strong opinions, the massive quantity of history, the research citations, and the tales of justice and injustice enacted over three centuries, leaves the reader much from which to draw conclusions.

The question of jury nullification of the law is not without pitfalls. If one defendant is acquitted because their jury does not believe it moral to punish their violation, can the next person charged under the same law expect equal treatment from a different jury? "A pattern of hung juries, nullification acquittals, or ameliorated convictions is a sure sign to the legislature that the law needs to be changed," Conrad writes. The reader must ask, though, how can we assure equal treatment in the interim? Presenting this argument at length, Conrad retorts that neither enforcement nor prosecution of the law is entirely uniform. "While the discretion of jurors is more and more tightly guided, narrowed, channeled, and directed, the discretion of prosecutors is almost entirely unfettered, with no effective oversight or supervision from any source," he protests.

The easy answer is to abdicate responsibility for judging the law to the judicial branch, but that does not protect citizen rights. "The founders of this country were in agreement as to the value of the trial by jury as an essential means of preventing oppression by the government," Conrad urges. Throughout the book he cites cases in which judges outrageously manipulated case outcomes, including an early one in which one judge "told the marshal 'not to put any of those creatures called Democrats on the jury'."

Court watchers have become accustomed to judges schooling jurors about the law, often to the extreme that juries are lectured that the judge is their sole resource for law questions, Conrad complains, quoting Clarence Darrow who said, "Most men and women readily approve the great mass of laws that are passed by the legislative bodies. In fact, they are entirely too ready to let others tell them what they must or must not do." Conrad cites the infamous Milgram study in which test subjects were directed to administer increasingly harmful electrical shocks to another person upon direction from authority. "Do we want that sort of slave-like, passive response from jurors? Or do we want jurors who are willing to defy authority, if they are conscientiously convinced that what authority is demanding is unconscionable?" he asks.

Conrad wishes judges to inform juries upfront of the right to return an independent verdict. Sadly, it is more common for a judge to tell the jury to decide the guilt or innocence of the defendant based on the evidence, but

*Continued...*

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rely entirely upon the bench for instruction about the law. Jurors need to be the “conscience of the community,” Conrad emphasizes repeatedly. “Charging jurors with unquestioningly applying the law, as laid down by the judge, strips them of the essential element of personal responsibility for the verdict they deliver,” he writes.

In the face of entrenched attitudes in the courts against jury independence, Conrad still puts his faith in the jury. “Even though most courts adamantly refuse to inform juries of their powers to reach an independent verdict, there clearly exists a large group of cases in which juries not infrequently reject the written law in favor of a merciful verdict based on their own concepts of justice and equality,” he writes. “When the defendant has already suffered enough, when it would be unfair or against the public interest for the defendant to be convicted, when the jury disagrees with the law itself, when the prosecution or the arresting authorities have gone ‘too far’ in the single-minded quest to arrest and convict a particular defendant, when the punishments to be imposed are excessive or when the jury suspects that the charges have been brought for political reasons or to make an unfair example of the hapless defendant, the jury is likely to refuse to convict,” he concludes.

The history of independent jury verdicts extends across cases about liquor laws, witchcraft, slavery, labor law, and more currently, the war on drugs, battered women’s cases, assisted suicide, and activism on both sides of the abortion debate, as well as anti-war protests. In addition, excessive mandatory minimum sentencing may spur an independent verdict, Conrad shows. While he includes gun rights when naming groups concerned about over-reaching laws, he doesn’t identify specific cases about firearms restrictions, the topic on which our constituency is most likely to have concerns.

(Alternatively, a search of “gun law” on [www.fija.org](http://www.fija.org) reveals a few stories our members may find interesting.)

Conrad’s chapters about the practical skill of presenting a case to encourage jurors to vote their conscience would, I expect, arouse varying opinions among practicing criminal defense attorneys! Still, these interesting pages quote successful arguments from landmark cases, identify evidence likely to convince a jury to acquit, and outline the delicate task of informing the jury that they may return an independent verdict.

Because gun rights and self-defense issues were not addressed in this book, I was left to wonder just how applicable the independent jury doctrine is to cases of self defense because of the common exception for self defense to crimes of assault and murder. However, in light of gun laws one could violate concurrent to self defense, strategies to invoke a sympathetic verdict become of vital interest. The independent verdict requires a jury that identifies and sympathizes with the defendant. With so many citizens brainwashed to fear and loath guns, that’s a tough challenge.

Jury nullification of the law is not a magic bullet, and it would be foolhardy for the armed citizen to depend on it as a way to defend unlawful choices. Still, the better we understand our criminal justice system, the better our choices are. Clay Conrad’s book helps us understand how juries and courts work and how they should work.

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

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## Networking

by Brady Wright

What's that I see outside my office window? It may be the unmistakable signs of spring, which, in the Seattle area, means a slightly lighter rain than usual and the fresh green of new moss growing on the roof of the garage. It means a

minor break from cataloging mailers and doing the odd drive-by booklet drop at ranges and stores locally so that I can huddle near the friendly glow of the LCD monitor while I expertly craft another Networking column. I have it on good authority that my wife will be reading this one, so that means that my audience is doubled!

Tom Berry, one of our great Affiliated Instructors from Kansas City, MO, has an upcoming Basic Tactical Pistol Class you won't want to miss. Some new things will be added to both the classroom and the shooting range parts of the class. Dr. Joe Waekerle will teach a block of instruction on shot placement and Kevin Regan of the Regan Law Firm will do an introduction to the Armed Citizens Legal Defense Network, Inc. There are still spots open so if you want to participate be sure to contact him soon. His email is [tberry2@kc.rr.com](mailto:tberry2@kc.rr.com) or check out more info about this class on his website at [www.defensivehandgunenterprises.com](http://www.defensivehandgunenterprises.com)

Network affiliated instructor Steve Eichelberger is offering some live fire classes in the Salem/Eugene, OR area this month. It's too late for couple of the mid-April sessions, but there remains one on Saturday, May 31. There are still spots available to register so if you live close by or want some superb training you are willing to travel for, you can register or get more info by emailing [FirearmsInstructor1@gmail.com](mailto:FirearmsInstructor1@gmail.com). You can view Steve's full web calendar at <http://www.firearmsinstructor.us/Home.php>

In April Alecs Dean offered training that is outside the shooting disciplines but very valuable nonetheless when he taught the American Heart Association CPR/AED, Blood borne Pathogens and Basic First Aid programs. All instructors and range safety officers should be certified in CPR and First Aid. If you already have this

certification, remember, the training must be retaken every two years. If interested in future offerings, you can reach Alecs at [alecs@internationalfirearmsafety.com](mailto:alecs@internationalfirearmsafety.com), or mail to International Firearm Safety, Inc. 3835 Arlington Street, Fort Myers, FL 33901-8413.

It's always great to drop by a range or shop of one of our local affiliates. Being in the Pacific Northwest, one such is the several locations of West Coast Armory. I shoot regularly at their north location, since it's about two miles from home and our affiliates Jim Hickey and Lance Chaar are instructors and range masters there.

I took my newly built AR pistol up for a session a while back and coordinated the visit with dropping off a couple of cases of our booklet, *What Every Gun Owner Needs to Know About Self-Defense Law*. While there, I chanced upon a brand new shooter taking his first test drive of a handgun. Listening to the conversation at the range counter, it turns out that he was like many folks, in that he was re-discovering the sport, having been in the military during his youth but not owning a personal gun since. While he was familiar with the AR from his service days, he had never actually shot a handgun, so the day's activities were all new to him. The range staff (in my humble opinion) did everything right in showing him the basics and discussing function and feel well before sending him out to the range with his mentor. They ended up at the lane next to me and to say that he had an excellent reintroduction to our sport is an understatement!

Most of you know the Network booklet *What Every Gun Owner Needs to Know About Self-Defense Law* has been reprinted with some minor changes. If you have copies of the old version, please go ahead and destroy them and let me know so I can replace them at no cost. If you are an affiliated gun shop, instructor or range, and you would like to set up a regular shipment of any reasonable quantity, or adjust the amount you are already receiving, just call or email me and I'll take care of it personally!

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

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

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## Editor's Notebook

### NRA Annual Meeting Report

by Gila Hayes

We were delighted to renew acquaintances with many long-time Network members at the NRA Annual Meeting in Indianapolis last week. The chance to put faces with names and extend a personal word of thanks and share a friendly handshake with the folks for whom we created and maintain the Network was truly a joy.

In addition, we signed up many new members whom we are now proud to count among the nearly 8,000 armed citizens who share our concerns about what happens in the legal system after one of us acts in self defense. We explained to many NRA members the Network philosophy of education, getting to know the attorney you would call after self defense and the financial support the Network provides its members to be sure the member's legal defense has all the bases covered — effective counsel, knowledgeable expert witnesses and trial strategy guidance to only identify a few.

We had to tell some of the folks stopping by that the Network is not able to do it all for them. If that sounds like an odd sales pitch, please understand that we take great care to accurately describe Network membership benefits. We will NOT just tell the potential customer what they want to hear! Because each member has the potential to draw considerably large grants to pay legal expenses, we are adamant that members understand exactly what the Network's role is in their legal defense.

The Network starts each new member off with over eight hours of lecture on DVD to be sure our elite group is educated far and above common standards. We continue this effort each month with this *eJournal*, and each year we produce a new DVD lecture program on topics that help members understand and prepare better to participate in the second stage of self defense — their legal defense.



Legal defense is not an effort that you can just pay someone else to do for you. Members have to be knowledgeable and able to communicate effectively with their attorney. Members have to understand the issues, so they can accept or refuse strategies their attorney proposes. While the Network certainly provides guidance, and is, of course, involved financially to pay attorney bills and other legal costs, we cannot make critical decisions on behalf of the individual member.

It was interesting to hash out these realities with so many NRA members and armed citizens. Not all were pleased that they simply could not just pay their money, leave all the hard decisions in the hands of someone else and never worry again, while others nodded thoughtfully, indicating that while post-incident management concepts were new to them, they understood the gravity of the issues. We are deeply committed to truthful advertising and establishing realistic expectations among the men and women who lined up at the NRA meeting to join the Network.

Having just spent three days discussing the mutual responsibilities shared between the Network and its members, I really appreciate all the armed citizens who took the time to ask questions, listen to our responses and who are now new Network members. A warm welcome to each one!

I think the most fun at the 2014 NRA Meeting was the time spent with five authors who sat in our booth and visited with their fans and autographed books for them

to take home. As always, Massad Ayoob was extremely popular, with his supply of books running low extremely quickly. The first day Mas was scheduled for his appearance, I was returning to the booth after a quick errand. Folks were lined up in such numbers that for a moment I wondered if we were close to the booth in which The Gunny was signing autographs.

Left: [L-R] Gila Hayes and Kathy Jackson compare notes.  
[Continued...]

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No, all those NRA members were queued up to talk to Mas, get his autograph and shake his hand.

F+W Media provided complimentary copies of Massad's new book *Gun Safety In The Home*, as well as copies of *Defensive Revolver Fundamentals* which author Grant Cunningham was present to autograph. F+W sent me with copies of my book *Concealed Carry for Women*, so the ladies were not left out, either.



I am so grateful to F+W Media, our publisher Jim Schlender, and his very able assistant Alicia Capetillo, for the wonderful contribution they made to attract people to the Network booth where they were not only able to visit for a little while with authors they like, but also learn about the Network educational efforts and post self-defense incident services for members.

"But wait! There's more!" Indiana attorney Brian Ciyou put in two stints talking to his friends and signing his book *Gun Laws by State*, as did popular women's author Kathy Jackson who signed copies of her book, *The Cornered Cat: A Woman's Guide to Concealed Carry*. It was great fun seeing gun owners of both genders crowd around to talk with their favorite authors and the smiles on their faces as they left with their autographed books.



A big thank you to all who made our outreach at the NRA Annual Meeting so effective.

*Photos: Top [L-R]—Massad Ayoob, Grant Cunningham, Jim Schlender and Gila Hayes.*

*Center: Grant and Jim discuss revolvers.*

*Bottom: The Network's member benefits were described on the booth panels to pique interest among those stopping in for author autographs.*



*[End of May 2014 eJournal. Please return next month for our June 2014 edition.]*

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## About the Network's Online Journal

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

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

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

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

The Armed Citizens' Legal Defense Network, Inc. receives its direction from these corporate officers:  
Marty Hayes, President  
J. Vincent Shuck, Vice President  
Gila Hayes, Operations Manager

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



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