

Supporting an Argument of Self Defense

The thoughts we'd like to share this month started as a discussion about the various factors we've observed in cases that make the news. The most evocative reports actually contain elements of self defense, but the armed citizen in question has lost the claim that he or she was the innocent party in the incident. Some fundamentals necessary to preserving your right to argue self defense can be accounted almost like a Letterman Top Ten List, but first, let's outline the underlying and basic requirements for a legitimate claim of self defense.

How to Spoil Your Self-Defense Case

by Art Joslin, J.D., Director of Legal Services

Laws across all jurisdictions generally have three things in common when claiming self defense after using any level of force.

1. You can't be in the commission of a crime;
2. You must be in a place you have a legal right to be; and
3. You must have an honest and reasonable belief force is necessary to avoid being killed or crippled. Some states have worded these three elements a little differently, but the intent is the same.

So, how do people blow their self-defense case before they even start? Violating one of the above elements will do it for sure.

In the aftermath of a justifiable shooting, there are a number of things that need to be clarified. I understand the advice of not talking to the police if you are so distraught, so emotionally out of control from adrenaline, that you can't make coherent statements. However, one of my mentors, Massad Ayoob, a number of decades past, developed a five-point checklist of facts police need to be aware of that is widely regarded as sound advice and I teach it to my students, as well.

1. **Establish the active dynamic.** The active dynamic is what the assailant did to you and not what you did to him. The assailant, in a pool of blood, will be looking very much like the victim and you need to establish what he did to you that caused you to use force.
2. **Advise police you will sign the complaint.** Don't say or do anything that make the police think the roles of victim and assailant have reversed.
3. **Point out the evidence.** You and the first responders just walked on stage and entered a chaotic scene. Evidence can get lost, transferred, destroyed, misplaced, and carried

away. Early on, be sure you point out where that evidence has landed. This will bolster your credibility both in the moment and after the fact.

4. **Point out any witnesses.** Before they leave the scene, point out any and all witnesses who not only saw what happened, but those who may have heard what happened, as well. Wouldn't it help your case if you were able to have police interview a witness who heard you declare multiple times, "I don't want to fight"? What about the witnesses who saw everything and can attest to you not being the initial aggressor? Wouldn't that be helpful, too?
5. **Decline to answer any further questions without counsel.** Other than identifying yourself to police, politely decline to answer any further questions until counsel can be retained. Always cooperate with police. Let them know they will have your full cooperation once you have sought legal counsel. You should never decline to identify yourself to police.

Violate the five-point checklist and you might certainly ruin your claim of self defense. A few other ways you can ruin your claim of self defense is to fail to do any of the following:

1. **Cooperate with police.** I've experienced far too many people who turned out to be not guilty of the initial crime but received additional charges for fighting with police. If the officer says you're under arrest and are going to jail, don't fight or argue with them. Those words mean that you are going to jail no matter what you do or say. Don't be the one with added charges like resisting arrest or obstructing justice.
2. **Give police your real name.** Yes, it happens all too often. Trying to conceal your identity will always come back to bite you. If you truly believe you are justified in using force, then why would you lie about your identity?
3. **Never lie to the police!** Do I even have to bring this up? You will eventually get caught when witnesses are interviewed, and evidence is presented. Here's the point: If you lie, the prosecution will use this against you at trial. "You lied then, why should we believe you are telling the truth now?" You've lost all credibility with the judge and especially with the jurors. Unless your defense attorney can legitimately show your "lie" was made under duress, this is not a good place to be.

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4. **Never conceal evidence.** Concealing evidence will make police immediately believe you are guilty because of your attempt to hide evidence. You can certainly photograph evidence on a cellphone. Evidence such as where shell casings landed, witnesses in the immediate area, etc., could be helpful to your case.
5. **Do not be the initial aggressor.** Starting the fight, even if you must resort to legitimate self defense, can spoil most chances of winning your case. Being the initial aggressor (and some states have added the factor of “provocation”) means you will be looked upon as the assailant. Most states allow you to regain your innocence by announcing in a loud, clear and concise manner that you do not want to fight, you’re leaving the fight, and you are retreating from that place. If the other party chooses to continue the fight after your announcement, then they have become the initial aggressor. This changes the dynamic of the encounter.
6. **Do not provoke violence.** Even if you are not the initial aggressor, do not incite the other party to use force. This is very akin to being the initial aggressor. You may not have started the fight but making the choice to stay in the fray and provoke your opponent can have similar repercussions. If you can safely retreat, why wouldn’t you?
7. **Do not use force too soon.** Many times, lawful firearm carriers get into trouble because they go to the gun much too soon. Remember, deadly force can only be used against the threat of deadly force being used against you. That threat must be honest and reasonable. You cannot simply state you were in fear for your life without being able to articulate what that threat was.
8. **Do not use force after the threat has passed.** Deadly force can only be used against the threat of deadly force being used against you immediately and unavoidably. We’ve all read about situations where a person exited the immediate vicinity of the fight, went away and got a gun, then returned and got into a shooting. Likewise, if the

aggressor withdraws and no longer poses a deadly threat, you may not use force to drive home your point no matter how frightened or upset you may be.

9. **Don’t discuss your case with anyone but your attorney.** The urge to speak to family, friends, and others about what happened will be overwhelming. Do not make any statements to the media. Let your attorney do that if he or she chooses. Even telling your closest friends what happened, simply to “get it off your chest,” can prove disastrous. Remember, there is no lawful confidentiality accorded to statements you made to your best friend, unless they happen to be your licensed counselor or clergy. If you want to talk and get things out, do it with a professional.
10. **No bravado.** The prosecution will be looking for photos and statements on social media to attempt to use against you. That t-shirt you wore on a fishing trip that reads, “Kill ‘em all, let God sort ‘em out” will not benefit your case when you’re at trial (or any other time). Remember, the government wants to portray you as a wild west, hair-trigger maniac who wants to go out and shoot up the town. Don’t supply evidence that they might use against you.

All of the points above are not meant nor intended to be legal advice. However, each point is practical advice I would include in any firearm training class. I highly recommend getting the advice of competent legal counsel in your jurisdiction on these enumerated points as soon as you can. Remember, in the aftermath of a defensive encounter, you will have so much more to think and worry about. In a justifiable shooting, don’t be the one who accidentally or even purposely gives the other side ammunition to prosecute you with. Be safe and be well.

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President's Message

by Marty Hayes, J.D.

The world is sure in a mess right now and just when you think it could not get worse, something happens to prove you wrong. For example, the U.S. economy is taking a hit, with the stock market falling, inflation rising and the price of gas and diesel going through the roof.

Then, there may be the anticipated riots to come on the heels of the US Supreme Court ruling to be released soon, overturning the 1973 *Roe v. Wade* decision. Next, unless you have been lost in the wilderness, you have heard about the two recent mass shootings, one in Buffalo, New York, of which all accounts point to an attack against the black community in order to foment more hatred and strife in our nation, and the second just a few days ago, where a mentally-disturbed 18-year-old walked into an elementary school in Uvalde, Texas and killed 19 school children and several adults.

Oh, I almost forgot. The Russians invaded a sovereign nation recently, killing thousands of Ukrainians in an attempt to occupy that country, which has cast a pall over world peace.

I feel that all the foregoing gives perspective to what I have to relate to you. The Network lost its Superior Court appeal to overturn the WA State Office of Insurance Commissioner's cease and desist order and fine. We here at Network HQ had hoped the judicial review would put the issue to bed. We are still able to serve our existing members, both in WA and in all of the other states and U.S. Territories, and besides, this outcome is not earth-shattering news when taken in context, considering the other problems we face as a society.

We have the right to appeal this judge's ruling to the WA Court of Appeals and will be doing so. If Network members want to read this latest ruling, feel free to e-mail me at mhayes@armedcitizensnetwork.org, and I will send you a copy (members only). You may also be interested in an announcement the Network's attorney and I have just released to the press, so the press release follows below.

Now, on a much more positive note, as I write this message, we are gathering at the NRA Annual Meeting, where we get to interact with thousands of like-minded individuals. This is always a spirit-lifting time for me, and I look forward to the next three days. By the time this *eJournal* is published, the meeting will be over, so I will close by saying it was great seeing you, if I did in fact see you!

Armed Citizens' Legal Defense Network to Appeal Judge's Ruling

For Immediate Release:

On May 25, 2022, Lewis County Superior Court Judge James Lawler denied a request by the Armed Citizens' Legal Defense Network, Inc., an Onalaska, WA based company, to quash a \$50,000 fine imposed against it and lift the cease and desist order by the Washington State Office of Insurance Commissioner. The Armed Citizens' Legal Defense Network is a 19,000+ member organization with members in all 50 states, with no consumer complaints against it.

The purpose of the Network is to help educate armed citizens regarding the laws of self defense, along with providing grants of financial assistance if the member applies for support after a self-defense situation.

For the entirety of its 14-year existence, the organization has steadfastly denied that membership in the Network constitutes having an insurance policy and believes that Judge Lawler made an incorrect ruling. The Network has also expected that this ruling would go to the appellate court, regardless of for whom the judge ruled. "There is no established case law in Washington State defining insurance, and if the judge had ruled in the Network's favor, we expected to be going to the next

level anyway," explains Network President Marty Hayes.

Consequently, the Network will be appealing the ruling to the WA Court of Appeals.

According to attorney Spencer Freeman, who represents the Network, state law defines insurance as: "A contract whereby one undertakes to indemnify another or pay a specified amount upon determinable contingencies." But, Freeman explains, when a member applies for a grant of financial assistance, they know there is no guarantee of assistance. The Network does not indemnify anyone, nor does it guarantee any specific payment upon a determinable contingency. "An act of self defense is an intentional act, not a contingent act and based upon this analysis, there is no way that what the Network does meets the definition of insurance. Thus, they are not selling insurance," he said.

The Armed Citizens' Legal Defense Network will be filing a notice of appeal long before the June 25th deadline.

For more information, please contact attorney Spencer Freeman at 253-383-4500.

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Attorney Question of the Month

Half of the states have laws allowing permitless concealed carry of firearms. Before members allow their state-issued carry permits to expire, some are asking if we are aware of unexpected pitfalls in permitless carry. This is a great topic for discussion in our online member journal, so we reached out to our affiliated attorneys, asking their thoughts on the question. While encouraging the discussion to extend beyond our questions, we tried to start the conversation by posing the following questions:

For our Affiliated Attorneys in states with constitutional carry--

In general, what is your opinion of permitless carry laws?

For our Affiliated Attorneys in states with constitutional carry--

1. **Have armed citizens violated other laws by exceeding the allowances of your state's permitless carry legislation? What problems have most frequently arisen?**
2. **Are citizens keeping concealed carry licenses for reciprocal license recognition when they travel**

outside your state? Are there other reasons to keep your state's carry permit?

3. **Without carry permits, how have police procedures changed when officers have contact with armed individuals?**

For attorneys practicing in a state that has not passed laws allowing permitless concealed carry--

1. **Do you wish your state would allow permitless carry? Why or why not?**
2. **What advantages, if any, do your armed citizen clients have because they have a carry permit? If your state passed a permitless carry law, would you suggest armed citizens in your state let their permits expire or continue to renew their permits?**

We then stepped aside and enjoyed learning from an extremely wide-ranging variety of opinions. This question started in May and if you missed the first installment at <https://armedcitizens-network.org/may-2022-attorney-question> may we recommend you also review it? In addition, the May comments generated responses from members, and we will cover those in this month's Editor's Notebook. It is our hope, as we wrap up this topic this month, that you learn as much from our affiliated attorneys' contributions as we did.

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A necessary place to start this discussion is to address the issue of what is "constitutional carry" and how does it differ from permitless carry. At least in Tennessee, unfortunately, most legislators and many individuals do not know the difference but it is critical in addressing the remaining issues.

First, "constitutional carry" should reference only a legal or statutory scheme where it is not a crime for a citizen to carry a firearm in public with the intent to go armed. In 1996 when I started as a volunteer advocate in Tennessee for the Tennessee Firearms Association we did not use the phrase "constitutional carry" nor was that phrased used generally in the 2nd Amendment discussions. The phrase that was more common was "Vermont carry" because at that time Vermont was the only state in the nation whose constitution had been construed to protect the right of citizens to carry a firearm for self defense without the need for any permit. Over time, the terminology of "Vermont carry" has given way to "constitutional carry" but they are essentially the same.

Second, "permitless carry" can be a form of constitutional carry, but that is not always the case. Tennessee is an example. In 2021 in Tennessee, our Governor advocated for what he and

some other "moderate" legislators called "constitutional carry." They misused, whether intentionally or ignorantly, the term. Tennessee did not pass and does not to this day have "constitutional carry." Tennessee has a law that makes it a crime for a citizen to carry a firearm with the intent to go armed in public, at their home, on their property – anywhere! See, Tenn. Code Anno. § 39-17-1307(a)(1). What Tennessee has done is to create statutory defenses or in some instances "exceptions" to that crime. Most of these are found in Tenn. Code Anno. § 39-17-1307 or -1308. Those defenses include things such as you are in your own home, on your own property, legally hunting or that you have one of Tennessee's TWO (2) permits. In 2021, those defenses were expanded to include "permitless carry" but even that law has seven conditions that must be met.

The reason why Tennessee is not a constitutional carry state is because any public carry is a crime to which defenses or exceptions are available. However, when Tennessee criminal procedure statutes talk about how "defenses," or "exceptions" to a crime are addressed, the statutory scheme is clear that the only time those defenses or exceptions must be considered is by a jury at trial. An arresting officer, a district attorney, even a judge can ignore the defenses and proceed to trial. At the same time, an officer or a district attorney could consider the existence of a defense or exception, such as a valid permit, and decide "there is no sense in prosecuting this person because they have a valid defense" – the problem is that they are not required to consider it.

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So, if you are a Tennessean or you plan to visit Tennessee do not assume that it is a “constitutional carry” state. The safest option, by far, if you are coming to Tennessee is to travel with a permit issued in your home state because that is the most protection (although it is still only a defense) that you can provide yourself.

Now, let’s consider some of the questions from ACLDN this month:

Have armed citizens violated other laws by exceeding the allowances of your state’s permitless carry legislation? What problems have most frequently arisen?

Yes, that does happen. For example, if you come to Tennessee thinking it is a “constitutional carry” state or even are aware that it is a “permitless carry” state, you are taking chances. For example, if you want to go to a public park in Tennessee (the Smoky Mountains for example), Tennessee law only provides a “defense” to the crime of carrying a firearm in a public park, campground, green way, etc., to those who have permits. Permitless carry is not a defense. See, Tenn. Code Anno. § 39-17-1311.

Also, for “permitless carry” in Tennessee, the law does not apply to anyone who can legally possess a handgun (Tennessee has no existing law related to carrying a long arm outside of vehicle transport). For example, 18-20 year olds can legally possess a handgun in Tennessee but the 2021 permitless carry law does not allow them to carry unless they are in or connected to military service. Tenn. Code Anno. § 39-17-1307(g). If you have a certain number of DUI charges in Tennessee or other states, that might not impact your ability to own or possess a handgun but it can and does limit your ability to rely on the 2021 permitless carry law. Tenn. Code Anno. § 39-17-1307(g) and (h). If you have a non-violent misdemeanor stalking conviction in Tennessee or another state, that does not impair your ability to purchase or possess a handgun or even to get a permit in most instances but it does prohibit you from relying on the 2021 permitless carry law in Tennessee. Tenn. Code Anno. § 39-17-1307(g) and (h).

Are citizens keeping concealed carry licenses for reciprocal license recognition when they travel outside your state? Are there other reasons to keep your state’s carry permit?

Yes. There are numerous instances why someone is far better off with Tennessee’s “enhanced” permit over either its “concealed only” permit or its 2021 permitless carry law. One is reciprocity, but the other has to do with statutory defenses and gun free zones because of the three options to carry in Tennessee the “enhanced” permit provides the greatest range of protections and defenses.

Without carry permits, how have police procedures changed when officers have contact with armed individuals?

Because of numerous problems with the statutes in Tennessee

there is a lot of confusion in law enforcement on how to deal with citizens carrying a firearm in public. The core of the problem is that any public carrying of a firearm with the intent to go armed is a criminal offense. Merely seeing someone carrying a firearm in public is all that is likely required to enable an officer to have a reasonable basis to stop and detain someone and, if so inclined to detain or even arrest them. This is because all situations in Tennessee where someone can carry with intent to go armed as statutorily created as either “defenses” or “exceptions” to the criminal charge and, as a result, are the obligation of the individual to raise at trial. Now, it is clear many officers and district attorneys are not going to push it that far if they can confirm that your permit is valid or that the facts exist to substantiate another statutory defense – but they can.

Do you wish your state would allow permitless carry? Why or why not?

Constitutional carry? Yes. Permitless carry as a defense to a criminal charge, like it did in 2021, no.

What advantages, if any, do your armed citizen clients have because they have a carry permit? If your state passed a permitless carry law, would you suggest armed citizens in your state let their permits expire or continue to renew their permits?

Tennessee does not have true “constitutional carry” although we continue to work for it. The Republican governor and many in the Legislature have fought against it. However, even if we were to pass it, we would continue to recommend that everyone get the enhanced permit. One reason is reciprocity and that need would only go away if all states adopt “real” constitutional carry for anyone who can legally possess a firearm. There is also an issue involving situations in which permits are defenses relative to certain gun free zones but permitless carry, at least in Tennessee, is not.

However, there is another advantage to getting the enhanced permit. That advantage relates to the defense of an individual in a trial. As an attorney, I would much rather be representing a client who has the enhanced permit, even if it is optional, and who gets regular professional instruction from qualified instructors (not everyone is “qualified” in the sense of being an expert witness) than to put on the defense in a criminal or civil use of force scenario for someone who has no permit and gets no regular, professional third party instruction.

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My state (Georgia) just passed constitutional carry, so neither set of questions squarely fits. I will provide some comments that fit both before and after passing constitutional carry.

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I think most people with licenses will maintain them, for two reasons. First, there is reciprocity, as mentioned in the question. But there is also an alternative to the NICS check when buying a gun at a gun store.

There are perhaps some unintended consequences for Georgia or any state going permitless. Under the federal gun free school zone act, there is an exemption for someone who has a license issued by the state where the school is located and such license allows you to carry in the school zone. Under Georgia's CC system, no license is needed to carry in a school zone. So it cannot really be said that GA issues a license any longer that permits carry in a school zone.

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Have armed citizens violated other laws by exceeding the allowances of your state's permitless carry legislation? What problems have most frequently arisen?

Answer: Though potentially one might violate a state law, in practice an apparent mistake in exceeding scope of permitless carry draws a warning. There is a more serious consequence federally. ATF enforces 18 USC sec. 922 (q). If one carries on public property within 1000 feet of public school property without a permit from that state, one risks federal prosecution. That has not happened yet in our state.

Are citizens keeping concealed carry licenses for reciprocal license recognition when they travel outside your state? Are there other reasons to keep your state's carry permit?

Answer: YES. In addition to reciprocity, one can carry in national parks (Acadia), the Appalachian trail, and state parks with a permit.

Without carry permits, how have police procedures changed when officers have contact with armed individuals?

I represent MANY cops. They have, during the last 20 years, always assumed everyone is armed unless searched. However, they are more standardized about their contacts with people they know to be armed. In Maine, being armed is no big deal.

Officer: "Where is your firearm?"

Subject: "On my right hip."

Officer: "Well, just be sure it stays there. This is just a routine traffic stop. Thanks for letting me know."

Of course, game wardens almost always interact with armed subjects during hunting season. No changes there.

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Do you wish your state would allow permitless carry? Why or why not?

Yes. I do wish our state allowed permitless carry. (1) Then it would be in line with the 2nd Amendment of the Const. and as the founders of this country intended free citizens to be able to carry firearms for the defense of their families. Further explanation is really unnecessary past this document as it is the supreme law of the land. (2) Having permitless carry would alleviate every county from having to take the time to process hundreds of Concealed Pistol Licenses ("CPLs") every year, thus reducing the amount of taxpayer dollars they use to complete such tasks. Fund could then be used for completing other needed services. (3) Permitless carry does pose some legal issues here in Michigan discussed below.

What advantages, if any, do your armed clients have because they have a carry permit? If your state passed a permitless carry law, would you suggest armed citizens in your state let their permits expire or continue to renew their permits?

Advantages to Permitless carry include: Residents not having to take an 8 hour long Concealed Carry Class. Not having to pay the county licensing fee to apply for the CPL.

Advantages to residents with CPLs include: Carry outside of the state, carry into restricted firearms free zones, and ability to carry other residents' pistols.

Issue #1 with permitless carry: Out of State Travel

This may surprise some, but I think Michigan should still issue CPLs to those who want one. Some of these reasons are as follows. First, it gives a Michigan resident the ability to travel to other states and carry their pistol because the other state recognizes a Michigan CPL holder's license. Otherwise, if a Michigan was strictly a Constitutional Carry State ("CCS"), it may not allow for a Michigander to carry their pistol into another state because various states do not allow non-residents to carry a pistol unless the non-resident has a permit from their home state.

Issue #2 with permitless carry: Pistol Free Properties

Second, having a CPL in Michigan allows the CPL holder to carry a pistol into certain buildings or onto certain properties that otherwise firearms cannot be brought onto. For example, Michigan law prohibits pistols in theatres, banks and any business with a liquor license, which include most gas stations, grocery stores, drug stores and restaurants. However, the law allows for someone with a CPL to carry a pistol into these restrictive places.

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If Michigan were strictly a CCS (permitless state), I think the restrictive places that prohibit pistols would become a burden to a pistol carrying residents who want to cash a check, buy a loaf of bread or fuel up their vehicle. With these types of laws on the books, my opinion is that CCS may reduce the amount of people that would carry day to day simply because of the restrictive laws. This is the second reason why I would say Michiganders should continue to keep a current CPL even if Michigan turns into a permitless state.

Issue #3 with permitless carry: Pistol Registration

Without a CPL, a Michigan resident who wishes to carry a pistol or possess a pistol, must own the pistol. Under Michigan law, in order to possess in your home, transport a pistol or carry a pistol it must be registered to you. In other words, you must be “on paper” as the owner of the pistol. The exception to this law is, you guessed it, by possessing a valid CPL. A CPL holder has the option of carrying a pistol that is owned by or registered to a family member or friend. So if the state went to permitless carry, residents would be limited to carry only pistols registered to them.

Will Michigan Become a Permitless Carry State?

Do I think Michigan will ever become a Constitutional Carry State? No, I do not. First, we have a lot of restrictive firearm laws on the books here in the state. A small glimpse is discussed above with banks and businesses with liquor licenses. and we haven't even talked about the restrictions on carrying in a vehicle, on school property, day care centers, and the open carry exceptions with a CPL.

The second reason I don't think Michigan will become a CCS is the state makes a lot of money on CPL applications. In Michigan a county charges between \$10 to \$115 per application. In 2017-2018 Michigan grossed over 8.5 million dollars on new CPL applications alone. In 2019-2020, Michigan grossed over 11.2 million dollars and in 2020-2021 the gross was over 13.4 million dollars. The state of Michigan would be taking a loss to cut out such a high money making service they provide.

The last reason I don't think Michigan will become a CCS is that the legislature and governor rarely agree on anything pro-second amendment. In 2020, via executive order, the governor and her attorney general attempted to ban the carrying of pistols at the voting polls. Collectively, several of us pro-gun attorneys were able to file a successful restraining order to prevent such a ban. Even if the legislature receives the votes needed to pass permitless carry, the current governor would let the bill die on her desk.

My Recommendation:

If the Michigan legislature was going to pass permitless carry into law, I would only recommend Michiganders let their licenses lapse if the restrictive pistol laws were repealed. In my

opinion the repeal of the restrictive laws seems very unlikely and thus I don't recommend Michiganders let their CPLs lapse.

Legal Cites: MCL 750.227, MCL 750.231a, MCL 28.422 Sec 2, MCL 28.425o, Michigan Concealed Pistol License Act

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We are happy to report that Indiana Governor Eric Holcomb signed a permitless carry/constitutional carry bill this spring. It will not become effective until July of this year. Hence, we believe Indiana is now the 24th “Constitutional Carry” state. Although we are quite pleased with this development, we are obviously not able to comment with respect to Indiana's specific experience with permitless carry. We think it is about time Indiana joined other states in eliminating the requirement that law-abiding citizens be required to pay a fee and/or ask the government for permission to exercise a right protected by the US Constitution and the Indiana Constitution. Please note that the focus of this new law is only a change for law-abiding citizens. This law does not change who can lawfully possess a firearm. If a person could not lawfully carry and/or possess a firearm prior to passage of this law, that person would still not be able to lawfully carry or possess a firearm. Nothing changes with respect to one's characterization as a proper person or prohibited person as a result of this law.

Hoosiers will still have the opportunity to obtain a “free” license to carry a handgun in Indiana, and we would highly encourage Hoosiers to obtain a license to carry a handgun. There are a couple reasons we encourage you to obtain your license. First, to the extent you wish to travel outside the state with a firearm, the laws in some other states may only permit you to carry in that state, if at all, with a valid Indiana license to carry. Of course, you need to be very familiar with the laws of the state(s) you intend to travel to with a firearm. Secondly, the process of applying for a license to carry in Indiana can serve as a type of vetting process to ensure that you are a proper person to possess or carry a firearm under state or federal law. For instance, we are aware of individuals who, in good faith, believed they were a proper person and not prohibited from carrying a firearm, but had something in their record from decades ago that needed to be addressed for them to lawfully possess and carry a firearm. Additionally, we have seen instances in which the state and/or federal bureaucracy have errantly characterized an individual as a prohibited person. Thus, the licensing process will bring to light any administrative issues before one might face criminal charges for illegal possession of a firearm.

Thank you, affiliated attorneys, for sharing your experiences and opinions. Members, please return next month for a new topic of discussion.

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Book Review

Pool Cues, Beer Bottles, and Baseball Bats: Animal's Guide to Improvised Weapons for Self-Defense and Survival

By Marc MacYoung
Third Edition, April 2021, Carry On Publishing
ISBN-13 979-8733474380
Paperback, 207 pages, \$14.99

Reviewed by Gila Hayes

Marc MacYoung has been updating some of his classic books from the '90s, and I've enjoyed the newer editions a lot. Because the Network assists members with their self-defense legal expenses across a wide range of defensive situations beyond just guns, the topic of improvised weapons and their legal use in an emergency comes up from time to time. One of MacYoung's updated volumes, *Animal's Guide to Improvised Weapons*, casts a different and important light on using improvised weapons, so I'd like to bring it to your attention.

Unlike many self-defense books, MacYoung does not focus on how to fight. He explains, "I write survival books rather than self-defense books. Self-defense books only show you what to do in certain situations. Survival books show you how to think in various situations." How does that apply to improvised weapons? He adds, "When I write about the defensive capabilities of a 'weapon,' I'm not talking how much damage it can do to someone trying to hurt you. I'm talking about sticking it between you and an incoming attack, so it takes the force, not you. Put another way, can you use it to block an incoming attack?"

MacYoung categorizes items commonly improvised as weapons, describes traditional technique used with similar, purpose-made weapons, and helps readers understand the kind of damage done by, for example, impact weapons, edged weapons, pointed weapons, shields, things that are rigid and things that are flexible. These characteristics affect whether the item is useful in a defensive capacity or only offensively. He suggests that the most important evaluation is to ask, "How can these sorts of weapons be foiled?...When dealing with weapons, you must really know more about defense than offense. If you know how a weapon works, you'll know its strengths and weaknesses. This means you can prevent it from being fouled up in your hands, and yet you can foul it up in other people's hands."

MacYoung's evaluation of the characteristics of striking weapons was very worthwhile. He writes, "It's a real compromise,

speed vs. clout. A lighter weapon is faster off the starting line. It takes less energy to get it moving. That means (usually) before the heavier weapon can get into motion, the lighter weapon has struck. On the other hand, with extreme disparity in weight, if the heavier weapon is already moving, the lighter weapon won't

be able to stand against it." That equates to damage and time, as measured in how long it takes for multiple swings of a fast, light weapon to cause damage, he continues. "Defensively, the light weapon can't stop a heavy one, but a heavy weapon is likely to not get there in time to stop a light one."

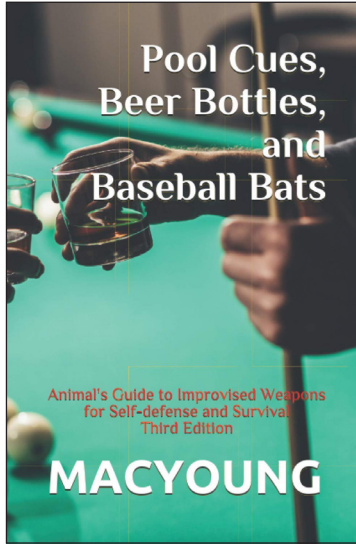
MacYoung writes extensively about grip, not only for effectiveness, but also how it is perceived as offensive or defensive. "Video is particularly damning when it comes to improvised weapons," he writes. "Something that is common through many state penal codes is 'designed as a weapon or adapted.' Adapting something into a weapon can be as simple as being seen to shift your grip in the video...

Showing up on video shifting your grip will be promoted by the prosecutor as a sign of your intent to attack. So, you damned well better be able to explain that it was more defensive in nature and that you were trying to get out of there."

After a chapter about long-handled items like shovels, MacYoung discusses grips for retention and grips for speed. Footwork is also vital—you can't just stand still and block. Then there's the element of structure, a complex topic, that on the surface, determines whether a block will stop the incoming blow or if it will collapse, as well as affecting your own striking power. "Structure isn't about how strong your muscles are, it's more about aligning your bones so your skeleton takes the incoming force and neutralizes it," MacYoung explains.

In this edition of *Animal's Guide*, MacYoung applies the concept of attack range about which he also wrote in [Multiple Attackers](#), a new book that we reviewed in late 2020. From beyond attack range, an aggressor can "call you every name in the book," he writes, but stepping into range changes the equation and the first twitch of a hand that might grab a weapon requires immediate reaction. The key is recognizing preattack indicators like an aggressor moving into attack range and hand movement, to mention only two. He explains, "Spotting the key points of a violence pattern that is starting to go down is the only real way to keep from getting your head knocked in." Knowing how various weapons are brought to bear "will keep you from getting creamed when someone tries to use an object in that manner. Fortunately, with a little practice, these patterns are easily recognizable."

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MacYoung recommends awareness of and familiarity with objects you might grab for defense. “Look around and see what you’d use to hold off an attacker...From now on, when you walk into a place, scope out what you could use...start picking things up and looking at them from the standpoint of how you would use them to defend yourself. Are they primarily offensive or could they also be used defensively?”

MacYoung encourages experimentation with the balance, or pivot point, of various items. “By using the pivot point, you’re adding both gravity and leverage to your muscles. The only muscle you use is to guide one end and half the weight.” Pivot points determine the location on the item with which you should block, he continues. “When you lock your arm and take a blow against the pivot point, the shock is transferred into your arm...What you don’t want to do is try to block near the tip if you can help it. That’s a good way to get your item leveraged out of your hand.”

Practice should primarily concentrate on blocking and parrying, he continues, because, “It is a simple and raw fact of life that you won’t always get to move first. The best way to deal with this is to be really strong in the defense department.” Later, he urges focus on grabbing something with which to block or shield rather than an object with which to attack. You can’t afford to get hit! “After you’ve been hit, both your time and your ability to effectively react dwindle,” he warns. He adds later, “One of the most readily available shields is a chair. In fact, given modern life you’re more likely to have access to a chair than a long stick that can be used as a weapon.”

How do you recognize that someone is setting up to strike? MacYoung teaches, “Be aware of his shoulders, not his eyes,” explaining that “very few can throw a punch without tensing and moving their shoulder in a certain way. A way that is easily

recognizable if you’ve seen it and learned to watch for it.” Likewise, “there’s a distinctive body weight shift onto one leg” that broadcasts preparation to kick.

Before an aggressor launches an attack, a distraction may buy you a little time to get away or shield yourself. MacYoung dedicates a chapter to the subject of diversions and distractions, be that a thrown beverage, an object hurled at an aggressor, or attempting a pain compliance technique, although that option comes with the warning that your attacker’s level of commitment determines whether you can derail him. Plenty of people are willing to injure or kill, he stresses, but if counter attacked, may or may not have enough commitment to come through your defenses. A committed attacker may come through anything you counter with, while what MacYoung terms a “plastic berserk” will put on a convincing demonstration, then “flinch away and dodge when you throw a soup can at him. That doesn’t mean he’s not dangerous, but that second gives you time to do something other than get hurt. Use it.” See our interview with MacYoung at <https://armedcitizensnetwork.org/rallies-riots-and-protests-part-2> for more on berserks and attacker commitment.

Reading Marc MacYoung’s books, article and essays is always eye opening and *Animal’s Guide to Improvised Weapons* is no exception. In fact, if new to this author, readers should check out the large quantity of instructional material he gives away freely at <http://nononsenseselfdefense.com>) Much has been written, both legitimate and not-so-trustworthy about fighting back with what is at hand. Most focuses on offensive use of objects; I benefited a lot from MacYoung’s repeated reminders about defense, blocking and shielding and his emphasis on the dangers of exchanging injuries with an assailant who has also grabbed what is at hand to use as a weapon.



Editor's Notebook

Discussions with Members

by Gila Hayes

At the risk of fanning dying embers into another inferno, I need to share the observations, comments and opinions of Network members who were troubled by some of the commentary published in our May Attorney Question of the Month. Behind questions about permitless carry as now allowed by a number of states, lurked the 1000-pound gorilla of mandated training as a prerequisite to possessing and carrying firearms.

A member, who is himself from the eastern seaboard, commented—
As someone who grew up in New York, regarding that New Jersey attorney I can say that in some of these Blue states like NY, NJ, CT, RI, even people who call themselves “Republicans” are generally just “Democrat-Lite”, there isn’t much Conservative values even in the opposing parties of these states. The reason being that obviously “mostly” anyone with true values of freedom leaves these States.

I responded that conservatism definitely has regional “flavors,” degrees and variations. The big question in my mind, and the one I can never resolve to my satisfaction, is the value or the danger our many variations and degrees of adherence to the Constitution and the Bill of Rights presents. I’ve heard *Gun Talk Radio* host Tom Gresham speak convincingly about the knife-thin split between political and liberal minorities and majorities and, if they aren’t corrupt, our elections would seem to bear out his opinion that our rights balance on a knife’s edge.

So, I look at that reality and ask myself how we can bring people with similar but not identical beliefs into the voting booth to cast ballots for conservative government? We share quite a few beliefs, like the right to possess deadly weapons, but we are diametrically opposed when defining what Scalia meant when he wrote about “reasonable restrictions.” Can we productively have discussions with and safely join in voting blocs with men and women who oppose the “all guns, all the time” flavor of gun rights? I surely do not know the answer!

Approaching the basic question about what constitutes reasonable restrictions, but from a different angle, several members wrote in to voice concerns about firearms ownership and carrying guns in public without mandated training, which often is required concurrent to licensing for concealed carry.

Over the years, I’ve exchanged ideas often with a member from the upper Midwest who manages sales of jewelry from estates and liquidation sales for jewelry stores. Because of the risks his work entails, he has good reasons to defend his rights to responsible concealed carry.

He expressed—
I am opposed to constitutional carry or legalizing concealed carry without a permit. Rights need to come with responsibilities. In the case of carrying a lethal weapon, our responsibilities include some very intense studying of both legal and moral issues.

Right now, I am running a going out of business sale for a jeweler in Michigan. Having first studied Michigan’s carry laws, which are generally permissive, and even allow appropriate force used to protect property, I asked the store owner in advance of the event whether she would like me to carry a concealed handgun while in her store. After she asked me to do so, I told her two things specifically: that I wanted her assurance that she would not tell her staff that I would be carrying, and that while I would not hesitate to use force to protect her safety or that of her staff and customers, I would not use it to protect her inventory. That is what insurance is for.

While earning a carry permit is just a start on a path of learning gun-related laws, gun safety, and self-introspection, it is at least a place to start. The instructor who helped me qualify for a carry permit in my home state, also helped me start thinking about these things, and introduced me to the Armed Citizens’ Legal Defense Network.

This note brought several ideas to mind and I thanked him for his thoughts on permitless carry, adding that it is not an easy subject to discuss with all of the different passionately-held opinions but discuss it we must!

The question about permits and training to receive permits may boil down to whether it is desirable or impractical to try to force responsible behavior (like mandatory training to get a permit) by passing laws. Legislation certainly won’t affect criminals.

Obviously, it would be great if there was any way for us, the community of armed citizens, to govern our own (similar to PADI certification for SCUBA divers), but is that just wishful thinking? How can we enforce our standards on others (to say nothing of how we would even reach agreement on what constitutes standards for responsible behavior)? What about enforcement? The very word smacks of government, but anything mandated via legislation is nearly certain to be over-reaching, and harm someone who is entirely responsible, but did not reach that state of maturity through required training, government permitting, and so forth. Because I personally cannot get past the harm done by over-broad laws and regulatory restrictions, I can’t weigh in in favor of mandatory training. It is a complex issue.

Our member then pointed out—
I share your concern for overreach by our government in many areas. That said, I don’t oppose requirements to get a license before driving a car, or teaching school, or practicing medicine or law. I also don’t object to wearing a seatbelt, which not only makes us all safer on the road, but keeps insurance rates down.

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I suppose that in some parts of the country, where kids are routinely taught gun safety and marksmanship by their parents, constitutional carry might work. In other areas I fear it would lead to results that would be catastrophic. I might be wrong.

He later related—

I recently was talking with a man who has been a father for forty years, and was complaining that the state of Michigan revoked his carry permit “just because he’d been convicted of DUI.” With constitutional carry, how do we weed out people who would pose a risk to society? They would also cast a shadow on responsible armed citizens. Criminals will always find ways to obtain guns; but at least we can delineate crimes committed with unlawfully possessed firearms from legitimate use of firearms by responsible citizens.

In response, I acknowledged that he had uncovered more hard questions and joined him in noting that I surely do not know the answers, either. Do we agree that someone who would drive drunk might also misuse firearms drunk? The **might** aspect of that proposition troubles me deeply, but I have no better formula. In pulling the DUI offender’s carry license are we punishing the drinker for misdeeds unrelated to firearms or are we predicting he may offend in the future?

I remain firmly convinced that blanket restrictions camouflaged under the guise of preventing possible future behavior by irresponsible or mentally deranged members of society do more harm to law-abiding responsible people while generally failing to restrict bad behavior by irresponsible individuals.

That’s one good reason I never pursued politics! My closest brush with establishing and imposing regulations on others arose many years ago with an appointment to serve on a land use/planning commission in a small city in which I owned a business. The commission needed a fill-in for times when other planning commissioners were absent and I naively accepted the appointment. If memory serves, I served for one session, voted on one or two petitions for variances and quickly abdicated. Intellectually, I know that land use and zoning is in the interest of the general public. In practice, though, telling someone who worked hard to buy their property what they can and cannot do on it really sticks in my craw.

When I apply that concern to armed self-defense rights, the issue is not about how attractive a city neighborhood is or about diminished land values caused by a run-down property. With gun regulations, if laws reflect the will of the citizens governed, I’m forced to weigh whether I have the right to tell another human what force option they can and cannot employ if someone tries to kill or cripple them. Of course, often laws fall

well short of the self-governance ideal, although I suppose we have to keep trying to get it right.

A member from the Pacific Northwest wrote that unsafe firearms handling fueled his leaning toward mandatory training, while expressing concern that he would be branded “anti-gun.” I know that he certainly is not! He has gone to the effort to qualify for his state’s enhanced carry license and as a Canadian, legally residing in the U.S., possessing Canada’s permit to buy guns and ammunition, he also has the perspective of operating under a different form of government. I was interested in his concerns when he wrote—

As a Canadian Green Carder permanent resident down here in the U.S. I strongly support the Second Amendment but one issue here really stands out. Different than in the era when it was written, when a high percentage of the populace (of necessity) lived around and used guns daily, today’s situation is vastly different. And I am referring to the lack of gun savvy and safe handling practices in the populace at large nowadays.

Here in the U.S. anyone passing the requisite background check can acquire a firearm(s). Being retired and spending many winters in Yuma, Arizona, I’d target shoot weekly at the range about 18 miles north of the city. And too often at the bench rest tables did I observe unsafe handling by the younger generation: lets say the “under thirties,” even to the extent of handling a firearm during an agreed cease-fire when others are downrange changing targets!

So shouldn’t training by the NRA – or somebody qualified – be required before acquiring a firearm? I know, I know, such a suggestion smacks of the dreaded “Gun Control” and I wish it didn’t. But what’s the answer?

Indeed! I could only reply. How I wish we as a community of gun owners did a better job of correcting “our own” as a preferable alternative to the heavy hand of government making broad restrictions that harm responsible people and rarely rein in the irresponsible ones. It is a really difficult problem, and we are all left asking “what’s the answer?”

In closing, I would be remiss if I ignored emails that stretched the words from May’s Attorney Question of the Month into more extreme opinions than what was actually stated. Doubting that there is much common ground to explore in such emotional responses, I’ll not rehash a point by point discussion, but only note that until we can identify and courageously examine the pros and cons of our own positions compared and contrasted against different beliefs, we are likely to fracture into even smaller splinter movements none of which will be able to prevail over organized anti-liberty politics. Will the real freedom-haters prove more cohesive? Only time will tell.

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