Armed Citizens' Legal Defense Network, Inc.

The Shifting Burden of Proof

An Interview with Massad Ayoob

Interview by Gila Hayes

Armed citizens sometimes read their state law and interpret its allowances in an overbroad manner. A few months ago, I asked Massad Ayoob what elements from self-defense law he sees most frequently misunderstood or misinterpreted by students and by armed citizens who read his books and articles. As an instructor who travels extensively and teaches classes nationwide, few have the pulse of the nation's armed citizens as accurately as he does.

I guess I should not have been surprised when the topic Massad identified as an area of misunderstanding raised by his students was not simply stand your ground or castle doctrine, but rather a broader area of concern, and was instead, the burden of proof when one claims self defense as justification for use of deadly force. What he described was an intricate volley between the defendant and the state, so we publish the following interview as an educational look into what is required to prove the elements of self defense when you are being charged with murder, manslaughter or assault.

We switch now to our familiar Q & A format to learn from Massad in his own words.

eJournal: Thank you for chatting with us, Massad! I expect most of our readers are familiar with the term "affirmative defense." Our understanding of it, though, may be excessively simplistic. What's involved here?

Ayoob: The big thing to understand with the affirmative defense is that it differs from the usual criminal defense of, "My client did not do this." The affirmative defense says, "My client shot him, but my client was correct in doing so."

Essentially, murder is the intentional killing of another human being—speaking of murder in general. If we shot in self defense, it certainly was an intentional act. If it turns out that he died, the elements of a murder charge have actually been met.

We call it a "defense" because we are not claiming it didn't happen; we are saying that we were correct in doing what we did. Essentially, what we are saying is that we stipulate to the act; we maintain that we were correct in taking that action.

You get a two-edged sword. The good news is that the affirmative defense is what is called a perfect defense. Many attorneys could spend the day arguing what is or is not a perfect defense! *[chuckles]* Basically, the litmus test is, if the judge's instructions to the jury can be construed as saying, "If you believe the defendant's story, you must find him not guilty," that is a perfect defense.

The bad news is, historically, the affirmative defense has shifted the burden of proof. Normally, the burden of proof is on the accuser–the state or the plaintiff–to show that a wrong was done by the defendant. Here, the defendant has said, "Yeah, I did the thing you say was wrong. I'm saying I was right to do it, and therefore should be held harmless."

I always invoke the balance test from two great legal scholars, in my opinion, one being, Henry Campbell Black. He was the author of *Black's Law Dictionary* which is still the standard today. If you look up "affirmative defense" in *Black's Law Dictionary* it will clearly state, the affirmative defense shifts the burden of proof to the defendant.

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Now, the other citation is from a man I consider a great legal scholar of our time on this topic, Andrew Branca, author of *Law of Self-Defense.* When Andrew meticulously went through the laws and the rules of the courts in all 50 states, he found what I did way back in the '70s, when I did that for my first book, In *The Gravest Extreme* that came out in 1980.

What the law says is that once self defense is on the table and the jury is allowed to hear the argument or the judge accepts that it is a possibility, at that point in a criminal case the burden of proof shifts back to the state to prove that it was not self defense. The one exception for many, many years was the state of Ohio, which said in the black letter law in a self-defense homicide or a self-defense harmful action the burden would be upon the defendant to show that it was self defense.

eJournal: So, if you shoot someone to avoid being killed during a home invasion, for example, and you are charged with murder, what do you have to prove, what does the state have to prove, and why would that shift?

Ayoob: A quick commentary on the standards of proof may help. A guilty verdict demands that you be found guilty beyond a reasonable doubt. When self defense is on the table, the standard of proof is to a preponderance of evidence to show that it was self defense. That remains the standard today in some of the states that have the so-called stand your ground option. That is a misnomer: really, it is simply a pre-trial hearing in which the judge determines whether or not there is enough evidence to show that you are likely to be guilty. If, in that hearing, you can show to a preponderance of evidence–more likely than not–that it was self defense, in those states the judge has the power to permanently dismiss the case, dismiss it with prejudice, and end it right there.

Let's go back: so, if we have self defense on the table, where is the burden of proof? For self defense to be on the table at all–for the judge to allow your attorney to say "self" and "defense" in the same sentence–prior to trial, you will have to show some corroboration that you are not just saying, "Take my word for it! It was self defense." The required corroboration is called "burden of production." When I hear "burden of production," to me the operative term is "burden." In and of itself, right there, it is a burden of proof element from the get-go.

Once self defense is on the table, the judge is going to tell the jury that the prosecution has to prove beyond a reasonable doubt that it was not self defense.

Then, as the instructions go to the jury, and as the door closes on that deliberation room theoretically, at law, the burden is back on the opposing side, on the prosecution.

eJournal: Wouldn't we want the state to have to convince a jury that we weren't in danger of being killed when we decided to use deadly force ourselves?

Ayoob: The problem with that is in human nature and jury psychology. Every one of us has met people who confuse "homicide" with "murder:" they think they are synonymous. It has been eight years now since the George Zimmerman/Trayvon Martin shooting and we still hear people screaming, "Murder! Murder! Murder!" even though Zimmerman was acquitted based on the evidence. You and I know that acquittal was absolutely correct based on the facts and the evidence that were scientifically incontrovertible.

So, given the fact that a whole lot of folks think that, "killing the guy" and "murdering the guy," are the same thing, and the trial starts with the opening statement of the defense saying, "Yes, my client killed him," we also have the burden of jury psychology/jury dynamic to prove that this was so necessary that, had the jurors been there, they would have shot the guy themselves.

That is why any trial strategist will tell you in real world jury psychology, the burden of proof really is on the defense, the wording of the black letter law notwithstanding.

eJournal: In order to successfully present an affirmative defense and meet our burden of proof, does the defendant need to get on the stand and give testimony?

Ayoob: It is almost always a good idea, but there are some cases where we have had to do it without the witness on the stand. We had one where the victim was a lifelong victim of battered woman syndrome and she had adapted to life by saying whatever an alpha male told her to say. We knew that a very aggressive alpha male was going to cross-examine her, and we knew where that would go. We had to use just the fact evidence we had, which was fortunately enough and we

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won an acquittal with two hours of deliberation. It can be an uphill fight. We had one where the client's cardiologist told his attorney, "Look, his heart will not withstand the stress of this trial. You might win the trial, but I would lose a patient." We were able to get that resolved without putting him on the stand and without him doing any time. He even wound up keeping his concealed carry permit.

The George Zimmerman case is a classic example. The reason that worked is because he had answered questions by detectives at great length. He did that without counsel present, which we normally would not recommend. He handled himself very well, very honestly and his statements in evidence were, essentially, what he would have said on the witness stand without being subject to tricky cross-examination by some very clever and desperately motivated prosecutors. As you saw there, his defense team did a brilliant job and got him acquitted.

By and large, an affirmative defense case does not come down to who shot him! We already know who shot; we have already stipulated that you shot him. It comes down to WHY did you shoot him. In the end, no one but you can fully explain those reasons.

eJournal: I have read that deciding to present an affirmative defense, equates to going on the offensive. Does your experience show that characterization to be accurate?

Ayoob: I would say that is very true. You can't just sit back and say, "He didn't do it." With real world psychology and real-world trial tactics, the very fact that you say, "I did it," means you have got to show a jury that what you did was necessary, and the ideal is that if they had been there, they would have picked up a gun themselves and shot him. I aim high: I try to convince the jury that if Albert Schweitzer was there, he would've given the guy a lethal injection.

eJournal: When we were thinking about doing this interview, you commented that you only take cases where the facts and evidence indicate that the defendant should put on an affirmative defense. This is your specialization and expertise. When you consult on cases, if you recommend an affirmative defense, do attorneys ever tell you that there is no way they would ever tell a jury that their client actually did what they are accused of doing? Do they lack the courage to present such an aggressive argument?

Ayoob: No, it is not that they lack the guts to put on an affirmative defense, it is they don't realize the shooting was self defense. I have lost count of the times I have run into lawyers who say, "How can I say that it is self defense? He shot him in the back!" Then, I have to explain to them how gunfight dynamics work.

The attorney might say, "How can I convince people it is self defense when my client shot him nine times?" I have to explain that to them, because they do not teach this in law school. When Marty or I teach deadly force, when we have an attorney in the class, we ask, "In your three years in law school, how much time did they spend teaching you deadly force law?" As a general rule, the answers range between, "I don't remember any at all," and "two maybe three hours" unless we have the rare case where one of them had a moot court assignment that involved a self-defense shooting and they had to research it.

Essentially, firearms instructors and often the defendant themselves–provided they are one of my graduates or one of Marty's Firearms Academy of Seattle graduates or a Network member who simply has listened to all of the member education videos the Network provides–is probably going to have a better handle on deadly force law than somebody who graduated from law school last week.

eJournal: Seems to me we may have to start by educating the defense attorney or be sure our attorney is amenable to having a conversation and taking coaching from you or an expert like you.

Ayoob: Oh, absolutely. I have spent a lot of time working with defense lawyers and have been a member of the National Association of Criminal Defense Lawyers for many years. I have been brought in many times to speak for state bars' continuing legal education on this topic.

One thing I have found is that the defense bar, by and large, tends to lean towards the left side of the political spectrum. They see freeing people from the system as their role. The great majority of the criminal defense lawyers' clients are guilty of at least some lesser or included offense.

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They do not think about protection from their criminal clientele, the very thing that we teach our people about. A whole lot of them are anti-gun, which I compare to an attorney who has been assigned to defend a child molester or a child pornographer. They are disgusted at the very thought of having to go through the evidence and look at it. They're a little like that if we are talking about a gun case and they have got to be educated on how guns work and how human dynamics work in gun fights. For them, it is like being forced to look at pornography. They find the very idea repugnant. A whole lot of them are anti-gun, and we are stuck with that. When I work with that type of attorney, I really have to educate them.

I can tell attorneys how these cases go because we have seen self-defense cases more often. Likewise, an expert witness can say, "Here are a whole lot of attorneys who have done similar cases, who've been successful in court. You might want to talk to them about sharing strategies," or as the expert, I can simply give them those strategies myself.

There may be a pre-trial hearing, in which case the lawyer might want an expert to come in and testify to a judge and say, "Look, here is what we would offer. We are not going to say words like 'reasonable,' or 'innocent,' or anything like that, but here are the parameters that we think that the jury really needs to know before they assess, 'All right, did this guy do the right thing in these circumstances or not?'" That is a situation in which an expert actually can have a part–we don't always, but we certainly can.

eJournal: Earlier, we discussed the court's discretion in allowing or prohibiting discussion of self defense during a trial. If the attorney says, "My client did it and here's why he was right to do it," why wouldn't a judge let the defense make their best attempt to prove that assertion?

Ayoob: Well, if there is no evidence whatever that it was self defense, the judge won't allow a self-defense argument to come in. If Richard Speck had said, "All eight of the nurses that I killed attacked me at once," that would probably not have been on the table as self defense.

eJournal: If we harbored any illusions or thought, "All I have to do is claim self defense," we should realize right now that sometimes a judge may say, "Oh, hell no, you are not going to talk about that."

Ayoob: That is pretty much how it goes.

eJournal: You've used two terms frequently. One is "the preponderance of the evidence" and the other is "beyond a reasonable doubt." Let's make sure we understand the terms, and if you have examples, that could prove helpful, too.

Ayoob: Strictly speaking, in criminal court, "beyond a reasonable doubt" is the prosecution's standard. Once self defense is on the table, they have to show beyond a reasonable doubt that it was not self defense.

Once we are in trial to establish that it was self defense, we need to show at least to the level of a preponderance of the evidence that it was self defense. That is the civil court standard, it is the Florida standard for basically killing the trial before hand, and generally is the affirmative defense standard.

eJournal: Confronted by bereaved relatives of the person you shot, how does a jury decide what is beyond a reasonable doubt?

Ayoob: This is, I suppose, an imperfect comparison but may serve for our fellow IDPA shooters. One of the rules is if you are wondering whether there's a double–two bullet holes at this defect on the target or only one–or you're wondering, did this bullet break the scoring line or not? the rule is if two range officers are arguing about it, that right there is reasonable doubt and automatically the benefit of the doubt goes to the shooter.

Now, in every jury deliberation there is going to be somebody arguing toward innocence and there are going to be others arguing toward guilt. Basically, if you cannot be sure, the very fact that you are not sure means it is not true beyond a reasonable doubt.

The bottom line is if you are not really sure you must not find him guilty of murder. If you are really sure that he was either incredibly reckless and should have known that somebody would die from what he did, and they did die, that, right there, is pretty much manslaughter. If you find yourself thinking, "Hell, I would have done what he did," that is a not guilty verdict.

eJournal: I've sometimes heard expert witnesses comment about cases in which the best they can hope

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for is a jury that can't agree on innocence or guilt–in the vernacular, a hung jury. Sometimes those cases are not retried, but sometimes they are. I am sure each person involved would have a different opinion as to whether that is a victory or a defeat. What do you think?

Ayoob: Well, as far as the jury in the court room audience is concerned it is a draw. It is a win if the other side realizes it didn't work this time, so it probably won't work a second time, and they think, "The heck with it! We drop the charges." Then it is a win, with effectually–for the most part–the same outcome as an acquittal, although not necessarily in the public eye, but insofar as further litigation.

eJournal: The shifting burden of proof is a surprisingly complicated topic, so in closing I am interested in how you would synopsize what we've discussed and what you'd like us to take away from this talk with you.

Ayoob: The reason the subject of burdens of proof is complicated is because the burden shifts back and forth. The general rule of thumb is that the burden of proof is on the accusing party. When, however, we are saying, "Yes, we did it, but we were right to do it," in the broad overview, the burden shifts back to us and the judge says, "Well, show us the preponderance of evidence that you are telling the truth."

In a criminal case, once the judge accepts that there is some corroborating evidence–whether it is testimony or fact evidence–and self defense is allowed in front of the jury, the burden of proof shifts back to the accusing side to prove beyond a reasonable doubt that it was not self defense.

The bottom line? Always act as if the burden of proof is on you because of the jury psychology element and something that we have not discussed yet, what I call the bigger jury—the public that you and your family have to go back to and live with after the trial. If you got acquitted and everybody in the world that knows you and your family thinks, "Well, the high-priced lawyer got you out of the evil that you did," that is a very hollow victory. You need to be able to convince everybody, at least everybody who does not have an agenda, that you did the right thing.

eJournal: Thank you for teaching us about burden of proof issue, and for a very good reality check about what matters in the end.

Network Advisory Board member Massad Ayoob is author of Deadly Force: Understanding Your Right to Self Defense which is distributed in the member education package for all Network members. He has additionally authored several dozen books and hundreds of articles on firearms, self defense and related topics. Of these, Massad has authored multiple editions of Gun Digest's Book of Concealed Carry and Gun Digest Book of Combat Handgunnery.

Since 1979, he has received judicial recognition as an expert witness for the courts in weapons and shooting cases, and was a fully sworn and empowered, part time police officer for over forty years at ranks from patrolman through captain. He recently became the president of Second Amendment Foundation. Ayoob founded the Lethal Force Institute in 1981 and served as its director until 2009, and now trains through Massad Ayoob Group. Learn more at https://massadayoobgroup.com or read his blog at https://backwoodshome.com/blogs/MassadAyoob/.

President's Message

by Marty Hayes, J.D

This month's message will cover the fight against the WA Insurance Commissioner. We have now finished the "administrative remedies" section of our fight. You see, when the Office of Insurance Commissioner decided to come after us, we had no real option other than follow WA law on how to contest an administrative action. That means before we could get our case in front of an independent, fair-minded judge, we had to jump through hoops appealing the Cease and Desist Order to the Insurance Commissioner. In real terms, basically we had to legally request that the Insurance Commissioner change his mind about his decision that we were selling insurance. Making that legal request has so far cost us over $60,000 (offset by $11,000 in donations for the legal fight–THANK YOU SO MUCH!). The good news is that we are finally able to start making our case to a superior court judge and we have done just that, filing a "Petition For Judicial Review" in Lewis County Superior Court. That filing is public record, but unfortunately, those public records are not available online.

Now, having said that, what IS online is the whole record of our fight with the Insurance Commissioner at their website. The link to the Network action is https://www.insurance.wa.gov/hearings/armed-citizens-legal-defense-network-inc . For anyone wanting to review the record, I would recommend starting at the earliest date and reading chronologically. When reading the documents, remember that there are two sides. The first side is the Network, ably represented by attorney Spencer Freeman. The second side is the WA Office of Insurance Commissioner, represented by both their in-house attorney Sofia Pasarow and OIC employee Presiding Officer Julia Eisentrout. That's right, Insurance Commissioner Mike Kreidler appoints the attorney he wants to hear the appeal to the OIC. Early on, we attempted to get an independent, Administrative Law Judge appointed to hear the case, but Ms. Eisentrout turned us down. I see that as water under the bridge.

I will discuss with our attorney whether or not we should release the legal filings for this new development, and that would likely be done through the eJournal. I will have an answer for you next month. This next chapter in the fight will likely take several months, if not all year. PLEASE do not be concerned if I do not discuss the issue in the next few President's Messages. Sometimes prudence suggests (or requires) that I not comment on pending legal matters. So, if you don't hear from me about the fight, that is likely the reason. For now, please read the press release I have posted on our web site home page. It explains the issue in language that everyone can understand, even journalists!

Are You an English Professor?

If you are an English professor, please contact me at Mhayes@armedcitizensnetwork.org and we will talk. Our fight with the OIC hinges on the definitions of the words: "specified," "determinable" and "contingency," because the WA definition of insurance is, "Insurance is a contract whereby one undertakes to indemnify another or pay a specified amount upon determinable contingencies." We, of course, can look the words up in the dictionary, but perhaps there is a better way to make the legal argument as to the meanings of the words–having an English professor explain why the terms mean what they mean.

We also might be looking for some assistance in each state to do some basic legal research on the issues in the case. If we decide to go this route, we will contact our Network Affiliated Attorneys through e-mail.

Marty becomes a YouTube sensation!

Isn't that what one is supposed to do these days, hype the stuffing out of yourself on social media? Okay, I admit that I am not a YouTube sensation, just a guy with a law degree beginning to discuss legal issues so all the new gun owners can get some reliable, reasonable legal education regarding their new-found ability to protect themselves in the wake of the social violence. Trust me, the civil unrest is not over. Interest in these topics will remain strong.

If you want to view the videos we have put on YouTube so far, just search "Armed Citizens Legal Defense Network" and they should pop right up. You will also see other similar videos done on the whole subject of armed citizens, and there is some pretty good information out there.

Attorney Question of the Month

In this column, our Network Affiliated Attorneys generously contribute commentary and information from their professional experience to help Network members better understand the myriad legal issues affecting armed citizens and self defense.

During periods of rioting this past year, state governors and city mayors exercised their emergency powers to declare states of emergency. Some orders suspended civil rights including legal possession of weapons–even those used for personal protection. As a result, members have asked for help understanding circumstances, restrictions and enforcement if their governor or mayor declares a state of emergency. Because the Network's staff can't answer questions about the many and varied laws of every state, we asked our affiliated attorneys about emergency powers in their state. We asked–

Does your state authorize its governor to declare a state of emergency and may they restrict possession of weapons while the order is in force? Do weapon restrictions while under a state of emergency extend to licensed concealed carry, to possession of weapons at home, to possession of weapons while in one's automobile?

Is the restriction only against firearms, or are knives, pepper spray and other personal protection devices also illegal while under a state of emergency? Are there exceptions that may help our law-abiding members?

Particular to legal weapon possession, does your state law preempt restrictions by cities that have declared states of emergency? What time limit, if any, applies to restrictions imposed during states of emergency?

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Kansas Statute Annotated 48-959 specifically prohibits the permanent or temporary seizure or registration of any lawfully possessed firearm(s) by any governmental entity or employee thereof in times of emergency, except as evidence in a criminal investigation. The statute is quoted in its entirety below:

> 48-959. Seizure of firearms prohibited during official state of emergency; cause of action created; attorney fees. (a) No officer or employee of the state or any political subdivision thereof, member of the Kansas national guard in the service of the state, or any person operating pursuant to or under color of state law, receiving state funds, under control of any official of the state or political subdivision thereof, or providing services to such officer, employee or other person, while acting during a declared official state of emergency, may:
> (1) Temporarily or permanently seize, or authorize seizure of, any firearm the possession of which is not prohibited under state law, other than as evidence in a criminal investigation; or
> (2) require registration of any firearm for which registration is not required by state law.
> (b) Any individual aggrieved by a violation of this section may seek in the courts of this state relief in an action at law or in equity or other proper proceeding for redress against any person who subjects such individual, or causes such individual to be subjected, to the deprivation of any of the rights, privileges or immunities provided by this section.
> (c) In addition to any other remedy at law or in equity, an individual aggrieved by the seizure or confiscation of a firearm in violation of this section may bring an action for return of such firearm in the district court of the county in which that individual resides or in which such firearm is located. In any action or proceeding to enforce this section, the court shall award the prevailing party, other than the state or political subdivision thereof, reasonable attorneys' fees.
> (d) "Seize" shall mean the act of forcible dispossessing an owner of property under actual or apparent authority of law.

Knives and spray are not regulated in Kansas, except for throwing stars and ballistic knives. Pursuant to KSA 21-6302 there are weapons which are prohibited to carry: bludgeon, sand club, metal knuckles and throwing stars. Also, per KSA 21-6302 a person is prohibited from

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carrying concealed a “billy, blackjack, slungshot, or any other dangerous or deadly weapon or instrument of like character.”

State law in Kansas preempts local or county firearms related ordinances which are more restrictive than state law.

Kansas law is very gun friendly. There are few restrictions on possession of lawfully owned firearms. We are a “Constitutional Carry” state. Concealed handgun permits are shall issue. We are a “Castle Doctrine” and stand your ground state. Kansas recognizes most other states CCH permits. Business owners have the right to post their premises as no gun places. Of course, Federal law applies where applicable.

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The power of the Illinois Governor with regard to emergency declarations is in Illinois Statute 20 ILCS 3305/7. https://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=368&ChapterID=5. This statute is part of the Illinois Emergency Management Agency Act. The relevant part states:

20 ILCS 3305/7. Emergency powers of the Governor. In the event of a disaster, as defined in Section 4, the Governor may, by proclamation declare that a disaster exists. Upon such proclamation, the Governor shall have and may exercise for a period not to exceed 30 days the following emergency powers; provided, however, that the lapse of the emergency powers shall not, as regards any act or acts occurring or committed within the 30-day period, deprive any person, firm, corporation, political subdivision, or body politic of any right or rights to compensation or reimbursement which he, she, it, or they may have under the provisions of this Act:...

(9) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, FIREARMS, explosives, and combustibles. (emphasis added)

Section 4 of the Illinois Emergency Management Agency Act defines a disaster as an occurrence or threat of widespread or severe damage, injury or loss of life or property resulting from any natural or technological cause, including but not limited to fire, flood, earthquake, wind, storm, hazardous materials spill or other water contamination requiring emergency action to avert danger or damage, epidemic, air contamination, blight, extended periods of severe and inclement weather, drought, infestation, critical shortages of essential fuels and energy, explosion, riot, hostile military or paramilitary action, PUBLIC HEALTH EMERGENCIES, or acts of domestic terrorism. (emphasis added)

The only reported cases citing this statue were brought by the same evangelical pastor challenging the constitutionality of the governor’s stay-at-home orders, which was unsuccessful. The COVID-19 pandemic meets the definition of a public health emergency. The governor has the power to declare more than one emergency related to the ongoing COVID-19 pandemic and was not limited to issuing a single 30-day disaster proclamation, so long as the governor made new findings of fact to determine that a state of emergency still existed. Some trial courts have held the governor’s stay-at-home orders unenforceable, but the governor apparently ignored them or they have not been decided by an appellate court because none appear in the reported appellate court decisions.

The governor has not attempted to restrict the possession or use of firearms. It is unclear if a declaration by the governor under his emergency powers that restricts the transportation of firearms would be constitutional. The state would need to show the necessity of such a restriction (a compelling state interest) to withstand a Second Amendment challenge.

The Illinois State Police issued emergency rules extending the expiration date of Illinois concealed carry licenses and Firearms Owners Identification (FOID) Cards until 12 months after the end of the pandemic disaster declaration. The State Police stated in a news release that the statute prohibiting carrying a firearm while masked does not apply to people carrying in accordance with the Concealed Carry Act and wearing a mask due to the COVID-19 crisis. The latter will apply to a nonresident who has a concealed carry permit or license issued by his or her home state and may therefore carry a firearm concealed in a vehicle while in Illinois. Nonresidents without an Illinois Nonresident Concealed Carry License (only residents of Texas,

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Virginia, Arkansas, Mississippi, Idaho, and Nevada may obtain an Illinois Nonresident Concealed Carry License) should be careful not to step out of a vehicle with a firearm unless it is unloaded and in a case because doing so is a crime.

Illinois Statute 20 ILCS 3305/11 allows local disaster declarations, but states that the effect of such a declaration is to activate the emergency operations plan of that political subdivision and to authorize the furnishing of aid and assistance thereunder.

Restrictions on possessing or transporting firearms would seem to be outside of the power of a local government under a local disaster declaration, but this has not been tested in the courts. Section 90 of the Illinois Firearm Concealed Carry Act states that the Act preempts local or municipal law. It would seem that any local restrictions of the right to carry under the Illinois Firearm Concealed Carry Act beyond restrictions imposed by the governor would be void, but this has not been tested in court. Local laws restricting high-capacity magazines, banning assault rifles, and imposing storage requirements have been upheld. Thus, the preemption question has not been resolved in Illinois.

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Does your state authorize its governor to declare a state of emergency and may they restrict possession of weapons while the order is in force?
My state (GA) explicitly empowers the governor to declare a state of emergency, but also explicitly prohibits restrictions on weapons.

Particular to legal weapon possession, does your state law preempt restrictions by cities that have declared states of emergency?
The state has a statewide preemption of weapons restrictions. It applies all the time, even during emergencies. If there are violations, the city can be sued.

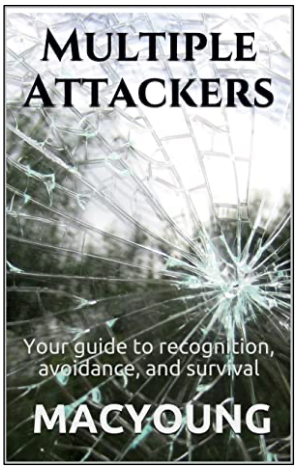
What time limit, if any, applies to restrictions imposed during states of emergency?
None.

A big "Thank You!" to our affiliated attorneys for their very detailed contributions to this interesting discussion. Please return next month when we ask our affiliated attorneys for their thoughts on a new topic.

Book Review

Multiple Attackers:

Your Guide to Recognition, Avoidance, and Survival
By Marc MacYoung
296 pages
Published by Carry On Publishing
eBook $9.99



Reviewed by Gila Hayes

As an avid reader of self-defense author Marc MacYoung's books, I was surprised when I initially had difficulty reading his latest book, a comprehensive study of the difficulties, both physical and legal, associated with defending against multiple assailants. While I read a lot of e-books, this book is different because it integrates links to video to illustrate the warning signs of impending attack and help the reader learn to describe the pre-attack behavior to police and prosecutors.

Integrating visual instruction into the book is compelling, but it requires robust internet connectivity. My first readthrough of *Multiple Attackers* was done with only limited Internet bandwidth so it was frustrating. Later, when able to stream the videos, I read it again and had a considerably different experience that proved the value of the videos. Caveat emptor: if you can't take advantage of the video component, be aware that an important element of *Multiple Attackers* will be missing.

Multiple Attackers includes lessons to aid in recognition of indicators leading up to a group attack, warnings about our natural human reactions when fearing attack, a discussion of defenses and why they fail or may succeed with emphasis on avoidance and de-escalation. MacYoung kicks off his book by stressing how little most people know about group violence. He details how the dynamics of group attacks differ from one-on-one violence. Because this is uncharted territory for most, our databanks of pre-existing knowledge about multiple attackers are extraordinarily deficient, which means we fall prey not only to situations we should have avoided, but if we survive the fight, we are often unable to explain "why the level of force you used was appropriate."

Amongst key principles illustrated by video in *Multiple Attackers,* are concepts of attack range and how to recognize when an assailant has developed it, elements of attack positioning, and a factor MacYoung calls "compression" that's related to proxemics.

Attack range for empty hands, he writes, "is the distance that someone can effectively attack you without taking a step," adding details about how skilled fighters develop range, meshed with explanations about positioning that "indicate[s] you're being set up for an attack or the attack."

Humans move into attack range for several reasons– not just to do violence to one another. When humans feel threatened, part of the natural response is to display behavior to suggest to the opponent that we're too dangerous to attack. Part of that urge is to get into attack range, whether you are bluffing or intend violence. "Through proximity (compression), body language, tone of voice, volume and word choice, and facial expression we do everything in our power to make it look like we are about to attack," MacYoung explains. Unfortunately, if you don't intend to fight, threat displays–intentional or otherwise–give the impression to witnesses that you were a willing participant in the brawl.

MacYoung's discussion of attack position includes movement from a neutral stance into a bladed one, setting up an advantageous location so it enhances "the attacker's advantages and reduces the defender's ability to quickly and immediately respond when the attack is launched." He comments that while the general public—some of whom could become your jury—don't know how multiple attackers move before attacking, without realizing it, you "actually have a huge data bank of what is 'normal' behavior in different environments," and should, at a minimum, pay attention when an individual or group's actions fall outside the norm. "To develop situational awareness, you need to know three fundamentals: What is normal behavior for a situation? What is abnormal behavior for a situation? What is dangerous behavior?" he teaches, with videos and discussion of each topic.

The third critical element MacYoung identifies is proximity, or as he terms it, "compression," which we sometimes create unwittingly, and other times, allow others to cause. By closing the distance, as he illustrates through a number of videos, you lose the ability to see signals of coming violence. You'll miss the "witness check," dropping bags or stripping off coats, associates flanking or coming up behind you, and other warning signs he identifies and illustrates through video.

[Continued next page]

Multiple attackers setting up and launching attacks often begin simultaneous approaches on a signal. Be aware of coordinated movement or signals as simple as nods or gestures which, when people are sitting or standing apart, are not ordinary behavior. Take care not to get trapped if several people who were stationary coincidentally move toward you or devise to bump into you at a chokepoint like a door, he teaches, commenting, "Of all the ways they could have gone, they just so happen to start out and in a direction that brings them right up to you (intercept vector)." It isn't normal for people to approach you directly, or suddenly "change course at the last second to come up on you," he points out, advising, "pay close attention to…people moving at high speed and slowing down. They slow to look casual while still doing an intercept vector."

Much of the book discusses the dynamics of group violence, what is required to avoid or survive it, and the legal aftermath of use of force. Those chapters are important on their own, while also building a foundation for several extremely timely chapters on protests and demonstrations. I think MacYoung's discussion of pre-riot danger signs that serve as clear warning to get out of the area immediately is reason enough to study the book, although there is much more of value in it, too.

He states that recent protests have been markedly different than those of earlier decades, in the behavior of the protesters, the media coverage and the police response. The media, he asserts, is "deliberately manipulating people by word choice," in particular the "claim that everything is a 'peaceful protest.' Riots, mobs marching the streets and attacking people, or 'counter-protestors' throwing rocks and bottles are not 'peaceful,'" he exclaims, adding that the media further manipulates society by under reporting the amount of violence happening at the protests. Although protests and counter protests are often violent, many times the injuries inflicted on non-protesters happen in the aftermath after the riot has been broken up and police have left the area, he explains.

Conditions are worse than you are being told in the news and MacYoung warns repeatedly about failing to leave riot-stricken areas. Shoppers, diners and other patrons in businesses attacked by rioters must get away from windows, and bear in mind that going out the front door means trying "to navigate through a pack of pissed off, self-righteous people." Commercial deliveries have to come in by a back door, he advises, and under threat, the patrons can escape the same way. In a typically colorful MacYoung analogy, he stresses, "DO NOT 'prairie dog.' That is the term I use to describe the behavior of only moving a short distance, stopping, and turning around to watch. This includes, as many people do, running into a store and watching through the window…In real life, bullets travel and go through glass," he warns.

People are oddly resistant to changing their plans to avoid riots. Drivers seeing a crowd blocking a street should pull a U-turn and leave, he urges, arguing vehemently against trying to drive through streets blocked by protesters. He urges business owners to lock up and close shop, or better yet, if warned of impending protests, leave the business closed that day. People become indignant at the idea of changing their activities to avoid protests, but MacYoung believes getting tangled up with rioters is not worth the physical danger or the legal aftermath.

How can you predict if a protest is likely to turn violent? "One of the biggest indicators is they show up dressed and equipped," MacYoung explains. Indicators are demonstrators clad in protective clothing including hoods, glasses or shop goggles for eye protection, long sleeves, shields, helmets and other protective sports equipment, even backpacks with red crosses painted on to indicate "medics" who carry emergency treatment for compadres who suffer injuries. Others use rucksacks to discreetly bring in weapons and keep them hidden until they're needed. Umbrellas may be used to form a multi-umbrella roof to prevent drone surveillance from spotting protestors donning protective gear and bringing out weapons. All of these serve as early warnings for the watchful.

Multiple Attackers is not a book about how to fight. It is a warning about the danger of multiple attackers, a huge collection of illustrations of the behavior groups of people demonstrate before becoming violent and a series of lessons about articulation of that behavior to explain to the courts, prosecutors and police the extreme counter violence necessary to stop a mob attack, if indeed the fates smile and let you survive to mount a legal defense. MacYoung closes his book with a heartfelt wish, "May you never need this information."

I got a lot out of *Multiple Attackers;* check it out at https://www.amazon.com/Multiple-Attackers-recognition-avoidance-survival-ebook/dp/B08GRZBDZJ/.

Editor's Notebook

Gratitude

by Gila Hayes

As we head into the 2020 holiday season, I find myself feeling distinctly unmerry. The uncertainty following the general election, continued civil unrest and renewed unconstitutional restrictions imposed out of fear of the corona virus are only a few of the reasons for feeling like misfortune is piling up on top of misfortune. I have to keep reminding myself that living conditions for most of us are so much superior to the challenges that faced past generations, or even situations our contemporaries from less prosperous countries endure, that failing to feel thankful on Thanksgiving Day and the upcoming holiday month is rather shameful.

Everyone has their own way of coping with poor-me moments when it is hard to feel grateful. Some focus on charitable activities, others make lists of what's good in their lives or take action and get busy battling their biggest sources of trouble. Big picture thinking is worth adopting, too, I think. While I cannot remember who said it, I often look for the truth in this statement: "No one wins at chess by moving forward every time; sometimes the player has to move back to reach a stronger strategic position."

Here at the Network, we are extraordinarily blessed to have the strategic advantage of 19,000-plus like-minded men and women joined together to pitch in and help when one of our number suffers a second attack from the legal system after fighting off a violent criminal. We continue to build a stronger Legal Defense Fund, knowing that the years ahead contain bigger challenges.

Most of our members will never meet one another and yet many make contributions to the Legal Defense Fund in addition to paying their yearly dues. While you will probably never have the pleasure of an in-person "thank you" and a grateful handshake from the 25 Network members for whom our Legal Defense Fund has paid legal expenses after self defense, I hope that you, our generous members, can put yourselves in those folks' shoes and vicariously experience how much good your contribution to further build up the Legal Defense Fund did for them.

As we enter the 2020 holiday season, there is much about which to feel uneasy. For me, though, there is much comfort in knowing that we have each other's backs and none of us will face the second stage of the fight alone. I am grateful for each Network family member who has joined Marty, Vincent and me in this mission.

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

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

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We welcome your questions and comments about the Network.
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