



Lessons in The Law of Self Defense *An Interview with Andrew Branca*

Interview by Gila Hayes

At the NRA Annual Meeting in Nashville, TN last month, we saw and heard much about gun rights and about resisting encroaching laws. Not only must armed citizens know gun law, we also need knowledge of laws governing use of force in self defense. In a highly mobile society, many citizens must grasp restrictions applied not only in their home area, but also by a number of states, a task complicated by state-to-state differences in what is legal and what is prohibited.

This area of the law is the focus of Massachusetts attorney and life-long shooter Andrew Branca. He started teaching defense law classes for armed citizens back in 1997 with the release of the first edition of his book, *The Law of Self Defense*, and teaching is now back at the forefront of his attention with publication of that book's second edition.

The Law of Self Defense's popularity spawned not only state-specific seminars that Branca teaches throughout the nation, but also online training delving into the specific laws governing self defense for certain states. This online resource is growing, and as Branca researches and prepares material for in-person seminars in a particular state, he develops online training for that state, too, or if that state is already included in his online course offerings, he updates the lessons to keep the training current.

Branca, a Network Affiliated Attorney, participated in our exhibit at the 2015 NRA Annual Meeting, so it was natural to ask him some questions about how the various laws work. He skillfully explains self defense laws in layperson's language, doing so with illustrative word pictures and examples, so let's switch now to our Q & A format to preserve the clarity of his instruction.

eJournal: When you returned to the lecture circuit with the second edition of *The Law of Self Defense*, I was pleased to see you were teaching your seminars nationally, although it seems to me with the patchwork of

laws from one state to another, that must surely be a challenge.

Branca: It is very important to distinguish between gun law and use of force law. What I cover is use of force law: under what circumstances can you use force against another person in defense of yourself, your family and your property?

That is completely different than gun law, which determines things like what do you need to get your concealed carry permit, where can you carry, what kinds of guns are legal in your state or your county or your city? Frankly, I find gun laws to be so varied even within a given state and the rules have changed so often that it is impossible to keep up on a nationwide level. I am not sure it can be done!

eJournal: Within use of force law, are some elements fairly uniform?

Branca: It is about 80% the same across the country. The other 20%, however, is important! That 20% determines the difference between whether you are acquitted or go to prison. From my perspective as an instructor, I know that what I really have to learn for a new state is the 20% that might be different.

eJournal: Are there commonalities in use of force laws state to state, or put another way, what areas are not uniform of which we should be aware?

Branca: There are always five elements: innocence, imminence, proportionality, reasonableness and avoidance that are the same in the whole country. Within each of those, there tends to be a limited number of options that states choose from, so you just need to know the option for that particular element.

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For example, one of the greatest areas of variance is on the element of avoidance. We have states that have imposed a legal duty to retreat, like MA, where you have to retreat before you can use either deadly or non-deadly force in self defense.

Most states that impose a duty to retreat—and there are 16 of them—only impose that duty to retreat before you use deadly force. So as long as you restrict yourself to non-deadly force, there is no duty to retreat.

Then there are a couple of states that actually impose the duty to retreat before non-deadly force but not before deadly force which is the opposite, and you think, “Well, how could that be? How could states come to opposite decisions?” Well, it is not unreasonable if you think about it, because if you’re facing a deadly force threat, you’d only use deadly force in self defense if it is imminent, if it is about to happen right now. What that state has determined is, if it is that imminent, we are not going to impose upon you a duty to retreat before you can defend yourself against a deadly attack, but if all you’re facing is a non-deadly threat, yeah, we want you to walk away from that because the risk is not death.

Then there are the stand your ground states, and they come in a couple of different flavors. There are what I call the “soft” stand your ground states like Florida where there is no legal duty to retreat before you use force in self defense. You can’t automatically lose your right of self defense for a failure to retreat, but the prosecution is still free to argue to the jury that the fact that you had a safe avenue of retreat and you didn’t take advantage of it makes your conduct unreasonable. So you don’t lose on the element of avoidance, but you lose on the element of reasonableness. The prosecutor still successfully attacks your self-defense claim on the issue of retreat, even in a stand your ground state.

Then there are “hard” stand your ground states. There are four of them; one is TX. In those states the finder of fact, typically the jury, is statutorily prohibited from even mentioning the possibility of retreat. In “hard” stand your ground states like TX, the prosecution is not free to make the argument to the jury, “Sure, he did not have a legal duty to retreat, but he COULD have, and that would have been the reasonable thing to do.”

So there are at least five options for the issue of avoidance: “soft” stand your ground states and “hard” stand your ground states, “hard” duty to retreat states, the ones that impose it for deadly force and the ones that impose it for non-deadly force. Think of each option

as a bucket. So when I do a new state, I try to determine which of those buckets do they fall in to, and when I know which bucket they fall into I have that element categorized.

eJournal: Your book, *The Law of Self Defense*, outlines self-defense law for each of the 50 states, but how has covering state-specific law developed within your seminars and online training programs?

Branca: The book covers all 50 states at a high level. For example, if I’m working on WA State and looking for a court decision on the issue of imminent threat for the book, I’ll find a good court decision on that issue then I’ll stop my research there. But when I do a seminar, I look at EVERY relevant self-defense law case in that state. It could be 50; it could be 100; it could be 150. So I might have 20 or 30 court cases that deal with the issue of imminence and I pick and choose relevant materials from as many as I need. The seminar is a much more comprehensive, holistic and thorough look at the law than we can do in the book. If we did that level of detail in the book, we’d have an 800-page book that cost \$1,000 and no one would be able to buy it.

eJournal: You just mentioned case law, which adds another layer of complexity to the layperson’s quest to understand the law that binds their use of force in self defense. How does it fit in with reading and trying to understand a state’s laws?

Branca: Statutory language is very treacherous. The statutes need to be thought of as the legislature’s desired intent—what they would like to see happen. But the legislators that pass the statute are not the ones applying it to real people in real cases. The courts interpret the statute and apply it to real individuals involved in self-defense cases.

It is not at all unusual for the courts to interpret a statute in a way that seems the opposite of what a plain English language reading would indicate. So, for example, there are a lot of statutes that say you can use deadly force to prevent a felony, sometimes they even say you can use deadly force to prevent any felony. But when it is applied in court, the courts say, “No, no, no! We’re not going to do that. We will allow you to use deadly force to stop a deadly felony but not a non-deadly felony.” Well, the statute doesn’t say that; the courts add that dimension.

If you just relied on the statute, you might think any felony, say, auto theft, would qualify. If someone is

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stealing an unoccupied car there is no threat to any individual, so that would not justify the use of deadly force to prevent that felony even when the statute suggests in fact that you can.

eJournal: Are there other risks in relying exclusively on our understanding of statutory law?

Branca: I cover the law in detail because I want people to have the confidence that the information they are getting is not just one person's opinion. There is a lot of very bad opinion out there, on Internet gun forums, for example. I want people to know this is not just Andrew Branca saying these things. This is what the *law* says, because here is the statute, here are the jury instructions, here are the court decisions that illustrate how it is actually applied on that particular issue.

I don't want people to use that level of detail to feel like, "Now I know the law, I can skate really close to the edge." A lot of any self-defense case is highly subjective, and if you have an unsophisticated jury (and most of them are not terribly sophisticated), and you have a very skilled prosecutor (and a lot of prosecutors are very skilled), the prosecutor will drive that subjective narrative very powerfully.

You can't take the risk that a prosecutor will be able to push you that last foot over the edge of the cliff and convince the jury that your conduct was unreasonable, or that you used force too soon, or he does not like the color of your gun or you had a round in the chamber. People ask me all the time, "What about having a round in the chamber?" or they ask about hollow point bullets or using a strange gun.

eJournal: I'm not surprised you frequently get those questions, in light of how much has been published about court-defensible guns, court-defensible ammunition and related concerns.

Branca: I tell people if you're well within the bounds of self defense, it is *good* if the prosecutor is making those arguments! If he is talking about any of that really ancillary nonsense that prosecutors like to talk about, he is not attacking what he needs to attack to disprove your claim of self defense. Either he feels that he has you so close to the edge that he can't quite beat you on the merits, but he is going to bring in these ancillary

elements to try to cloud the jurors' minds and make them think you are a bad actor.

To disprove your claim of self defense, a prosecutor has to attack one of those five elements: innocence, imminence, proportionality, avoidance and reasonableness—period! The color of your gun and the hollow point bullets are not legally relevant to the attack he is supposed to make, but if you are on the border of any of those five elements, they might be enough to push you that last couple of inches off the edge in the jurors' minds, so they decide to come back with a guilty verdict or a compromise verdict.

The other possibility is the unfortunate case of the politically-motivated prosecution, where they really have no hope on the merits at all—like in the George Zimmerman trial. George Zimmerman's case was the cleanest self-defense shoot I have ever seen brought to trial. They couldn't attack any of the five elements; they didn't have any evidentiary basis to attack on. So all they talked about was the ancillary stuff: the fact that he had a round chambered, the fact that he was frustrated with crime in his neighborhood. None of that is really relevant to any of the five elements of self defense, but it is all they had to talk about.

Normally, I tell people, look, if you are well within the bounds of self defense, and the prosecutor is talking about the color of your pistol—that is good news for you. Every minute he is talking about that he is not talking about something that really matters. All those kind of cosmetic characteristics of the firearm ought not be important unless you've already really screwed up your self-defense case.

Now having said that, there are two areas where I encourage people *not* to mess with their concealed firearm. Stay away from making changes to the trigger. Rather, try to buy a gun with a trigger that you like OEM from the factory.

The other thing is safety devices on carry guns. Never, ever, ever deactivate a safety device on a firearm that came that way from the factory. There is no way you are ever going to convince a juror that the factory believed that device was necessary to the safe functioning of the

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5 Key Elements

- Innocence
- Imminence
- Proportionality
- Avoidance and
- Reasonableness

gun, but you thought differently and you are the one who is correct. You will never sell that to a jury.

eJournal: How is that likely to play out?

Branca: You run the risk that the prosecutor will make a compelling narrative that you acted not with malice, but negligently. If you acted negligently, self defense is not a legal defense against criminal negligence. You run the risk of stripping yourself of the ability to make an effective self-defense argument in court because they are not arguing that you acted intentionally, they are arguing that you acted negligently.

Your defense then cannot be self defense, because they are essentially saying you did it by accident. Self defense is never a defense to an accident; self defense is only a defense to a deliberate act. For self defense, you say, "Yes, I shot that person, but I had legal justification for doing so," but if you shot the person by accident—you had your gun out and someone startled you and you shot them—you can't claim self defense. That was not a self defense shooting; that was an accidental shooting.

You'll end up getting hit with criminal negligence. The punishment for that is a form of manslaughter, so you will end up getting 15 years and in a lot of states they have mandatory add on years if you used a firearm to commit the crime. In FL, for example, they have the 10-20-Life law, you're looking at 15 years and another up to life for having used a firearm in the death of another person, so you are looking at almost as much time as if you were convicted of deliberately murdering that person with premeditation.

eJournal: Laws and restrictions on self defense are complex enough without making it worse by opening yourself up to accusations of negligence. That was a good explanation. This seems like a good place to take a break, so I'd like to wait until the next edition to move on to another facet of the law of self defense that you mentioned in passing a while ago, that of jury instructions. Let's tackle that subject and some questions I have on attorneys' knowledge about self-defense law in a second installment of this interview in next month's online journal.

For now, Andrew, thank you so much for all of the energy, study and research you have put into becoming such a great source of information on the statutes and regulations governing use of force in self defense, and more importantly, how they apply to the decisions we make not only in the moments building up to a use of force incident, but the earlier choices we make about guns and other equipment, too.

Readers, please return next month for more instruction and information from Andrew Branca and The Law of Self Defense. For more information on Branca's seminars, online training and his book, see <http://lawofselfdefense.com>. His business contact information is Law of Self Defense, PO Box 312, Maynard, MA 01754, telephone 978-331-0988.

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President's Message

Network Reaches a Major Goal

by Marty Hayes, J.D.

I am pleased to report that our Legal Defense Fund has exceeded the **One Half of a Million Dollars** goal! This is huge, folks. A half-million

dollar Legal Defense Fund was our goal when we began. I aimed for that amount because it was my expectation that once we reached that milestone, we could count on fully funding the legal defense of any member needing our assistance after a self-defense incident.

Most of the insurance backed programs put an arbitrary limit on the amount of reimbursement they will allow after an acquittal. For example, the United States Concealed Carry Association will only reimburse either 25k, 50k or 100k of legal expenses, and that is after the acquittal. You have to win the fight in court first, then request reimbursement. Do you have that much money lying around to spend on attorney's fees? The Network does have that much money to pay for your self-defense legal fight if you are a member. And we pay it to your attorney up front, so you have the best chance of walking out of court a free man or free woman.

Additionally, with reaching this goal, we now are facing a new decision. We can keep growing the Legal Defense Fund, or we could add a bail assistance program. As you know, if you are arrested for a serious crime after an act of self defense, you will be given a bail hearing, and the judge will decide if you are trustworthy enough to be released on your own personal recognizance or he or she will set a bail amount. Bail can either be a cash bail, meaning that you must come up with the cash (see the [Larry Hickey story](#) linked on the front page of our website) or you could post bail by hiring a bail bondsman. To hire a bail bondsman, you pay 10% of the bail amount out of pocket (\$10k for a \$100k bail amount).

So, having reached this milestone for the Legal Defense Fund, we must decide if we want to add a bail benefit for our members or grow the Legal Defense Fund even larger? You tell me by sending a personal e-mail to me at mhayes@armedcitizensnetwork.org. Your input would

be appreciated. We have never promised bail as a part of the Network benefits, although I once actually authorized an attorney to pay a small bail amount for one of our members after a misdemeanor situation, because he was in jail with no way to access his bank account, so it isn't exactly new ground for me. I will look forward to hearing from you on this matter.

Legal Education Seminars

Occasionally an opportunity to train in the legal arena arises that deserves special attention. We have three such opportunities coming up in 2015, which Network affiliated instructors are either coordinating or teaching. The first is the Massad Ayoob Group's *Use of Deadly Force Instructor Certification* course, taught by Massad Ayoob and myself.

Some years ago, I teamed up with Massad Ayoob to offer a similar course at The Firearms Academy of Seattle, but it has been at least a decade since we have done one. So, we figured with the increased attention concealed carry has gained over the years and the proliferation of people teaching the subject matter that it was time to offer the training again. The dates for this year's course, held at the Firearms Academy of Seattle are July 27-31, 2015.

This is a week long seminar, which will prepare the student to both teach the subject matter and to testify in court as a material witness to the material the instructor taught to his or her students OR in some cases, to testify as an expert in court. The course will be held either at the headquarters of the Firearms Academy of Seattle, near Onalaska WA, or at a larger meeting room in nearby Centralia or Chehalis, WA. For those flying in to take the course, we strongly recommend flying into Portland International Airport (PDX), renting a car and driving to Chehalis/Centralia. There are reasonable motel rates in these two cities, and it is a nice 25 minute drive out into the country to the headquarters of The Firearms Academy of Seattle.

Firearms Academy has a classroom which can seat 36 people comfortably, and while we do not expect to exceed that number of students, if we do, we will move the location to a conference center at one of the hotels in Centralia or Chehalis.

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The instructor certification course is limited to people who hold instructor credentials from a recognized firearms instructor program (such as the NRA or one of the professional schools) and also to members of the Armed Citizens' Legal Defense Network, whether those members teach or not. It never hurts to have an instructor credential behind your name if you have to justify your actions in court, as being an instructor is one of the pre-requisites to being considered an expert in a subject matter. We welcome all members to consider attending the course, and especially those teaching the discipline. More information can be found at <http://firearmsacademy.com/guest-instructors/109-udfi>.

As you read in this journal's lead article, Andrew Branca, one of our Network Affiliated Attorneys is holding his *Law of Self-Defense* legal seminar across the nation. I attended an abbreviated version of the course last February and can recommend it highly. You can see if Andrew is teaching the course locally by visiting his website <http://lawofselfdefense.com> and if your state is not on his seminar schedule, you might consider contacting him directly and hosting one of his courses. It is well worth the effort.

J.B. and Glenda Herren, two of our Pacific Northwest Network Affiliated Instructors, are coordinating a six-day (48 hours of presentations) All Star Legal Conference. For this unique training course, they are gathering some of the top names in the self-defense legal community together to discuss both the different aspects of the law of self defense, but also some gun rights issues. On tap to teach at their November conference are Massad Ayoob, Mitch Vilos, James Fleming, Alan Gottlieb and myself.

I am looking forward to rolling out a couple of new lectures I am starting to give around the country, *Court-Proofing Self Defense* and *Training to Solve Problem Two* as much as I am looking forward to listening to the different speakers and getting a chance to pick their brains. There will be over 100 years of legal experience teaching at the six-day conference. See http://www.fridayharborgunrunners.com/ecProduct_165_60 for further information.

Meet Melissa DeYoung

When you call the Network (360-978-5200) you will likely be greeted by a cheerful voice on the other end of the line, belonging to Melissa DeYoung. She recently left her profession in

the medical billing industry to join the Network team full-time. Melissa had been doing fill-in work for the Network throughout the latter half of 2014 and into the first part of this year. We were delighted in March when she accepted a full-time position with us.

Melissa and her husband have been Network members since our early years, and both are firmly entrenched in the gun culture. Both Melissa and her husband teach for my other business, The Firearms Academy of Seattle. She is also a hunter, mother of an adult son and daughter, and grandmother to a lively little boy. We are very excited to have her helping us grow the Network, and so if you get her on the line, be sure to welcome her to the administrative team.

A New and Disturbing Wrinkle in Flying Armed

When flying back from the NRA Annual Meeting I ran into an American Airlines policy that had me fuming and caused a considerable amount of inconvenience. It seems that they treat people flying with guns in their checked baggage like second class citizens, requiring those of us who are transferring to a different airline, to go retrieve our checked bag between flights, and re-check it at the check in counter of the second airline.

This happened to me recently when flying from Nashville to Portland. I had to race down to baggage claim at LAX, and then hustle up to Alaska Airlines to check (and pay another baggage fee) to get my checked firearm home to Portland. I just about missed the connecting flight. I will make sure that American Airlines never gets another dollar from me, if I have any choice.

When I asked the American Airlines gate agent about



the policy, he said it was a liability issue. I guess guns disappear from luggage from time to time, and they don't want to pay for a gun that came up missing if another airline's employee stole it. Well, I can understand that, but it seems pretty much like the old saying about "stepping over dollars to pick up pennies." You see, because of my job, I fly fairly often, and up to now, I have preferred to fly American Airlines.

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Now, because of my personal boycott of American Airlines, they will miss several thousand dollars a year of income due to this policy. So be it.

Another Milestone Reached At The NRA Convention!

While we were taking new member signups at the NRA convention, we quietly exceeded 9,000 active members! I mentioned earlier that one of the goals I set for the Network was \$500,000 in the Legal Defense Fund. My other goal was 10,000 members, and we are now 90% of the way to reaching that goal. Can we reach it by the end of the year? I hope so.

We are prepared to serve this many members and more, as we have added another full-time administrative assistant to help Gila. We have also started a little advertising, but let me be frank: The quickest way for the Network to grow is for each member to have another shooting buddy or family member join the Network. Just think, if each of the 9,000 members recruited just one new member for the Network between now and the end of the year, the Network's membership would double! How cool would that be? Remember, that even though the Network is a business, it is also a member organization, and Network membership benefits grow stronger with each and every new member.

If you would like some brochures and copies of our *What Every Gun Owner Needs to Know About Self-Defense Law* booklet to hand out to your family, friends and members of your shooting range or club, please give Melissa a call at 360-978-5200.

More News From The NRA Meeting

Gosh, we sure had a productive three days in Nashville. We took care of a lot of business, and as a result, I expect to have some very exciting news to share with you as the year progresses. For now, my big news is that we have been told that *The Best Defense* TV program has been renewed for another year. *The Best Defense* team of Jeff Murray, Michael Bane, Michael Janich, Mike Seeklander and myself will be getting together soon for a production meeting to outline next year's shows. You can see a quick interview with Michael Bane and Ed Head from the Outdoor Channel,

shot at the NRA Annual Meeting at this link <http://www.outdoorchannel.com/eventvideo.aspx?id=27777>. Scroll down to the bottom of the page for the segment with me, Michael and Ed.

It was also good for my ego when people were walking by the booth, and they stopped and commented that they liked to watch me on *The Best Defense*. I mean, hundreds of people—I never knew the show was that popular. Many of our visitors also joined the Network based on my appearance on the show, liking the message I was delivering. I am really looking forward to next year when you can expect an even more expanded role for me in *The Best Defense's* next season. You will have to watch the show to see what that will be. The show is airing now on the Outdoor Channel. Learn more at <http://outdoorchannel.com/the-best-defense>.

For me, the most personally gratifying part of the NRA show came when Network members stopped in at our booth to say hi to Vincent, Gila and me. I vividly remember the first NRA meeting we participated in in Phoenix, AZ, in 2009. I was thrilled then when the half a dozen members we met at that show stopped by our booth, but here at Nashville, the number was well over a hundred members just stopping by and thanking us for being there.

I also gave several podcast interviews at the NRA show and was also filmed by Aaron Little, of Tactical Response. Aaron has been a long time instructor for Tactical Response, with Tactical Response being a major recruiter for the Network. It seems that every week when we do the summary, that one or two of our new members are their students and they report that their instructors referred them to us. I wish all of our Network Affiliated Instructors were as successful as they are with promoting the Network.

That will wrap up this month's message. I always am excited for the future of the Network when I come home from one of these trips, and this one was no exception.

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Attorney Question of the Month

With over 20 states allowing legal use of medical marijuana (to say nothing of the few where recreational use is now legal), we are beginning to get questions about concealed carry licensees' use of medical marijuana while carrying guns. Although we understand that personal opinions about marijuana use vary widely, it is appropriate to discuss legal aftermath issues for cannabis users who are also armed citizens. With that in mind, we asked our Network Affiliated Attorneys—

- 1) Do your state laws address gun possession while under the influence of cannabis?
- 2) What issues might you anticipate arising following self-defense gun use by a legal marijuana user?
- 3) What enforcement action could arise from 18 U.S.C. 922(g)(3) prohibiting firearms or ammunition possession by one who is "addicted to any controlled substance"?

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1. The State of Oregon does not prohibit the use of any intoxicant (legal or otherwise) while in possession of a firearm. Common sense would obviously say the two don't mix, but Oregon does not criminalize such behavior.
2. Because Oregon has allowed Medical Marijuana since 1999, and recreational marijuana will be allowed in 2015, use of force can come up for individuals involving the defense of self or property in marijuana cases. Thankfully no citizen has limited rights under Oregon law based on their participation with marijuana. A skilled defense attorney should be able to bifurcate the jury's potential biased view about marijuana from the use of force or self-defense incident.
3. In Oregon we had the sheriffs refusing to issue concealed handgun licenses to individuals registered under the medical marijuana program. The sheriffs tried to take the stance that these individual were not allowed to have firearms under 18 U.S.C. 922(g)(3) because their use of marijuana. The Oregon Supreme Court

essentially took the stance that the sheriffs were correct in their interpretation of federal law banning firearms from individuals who use marijuana, but interpreted the concealed handgun law in a way that made the drug usage moot. In *Willis v. Winters*, the court even went as far as to say that the local sheriffs could enforce federal law in Oregon that bans individuals from having firearms.

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Alabama does not currently allow for legal possession of marijuana under any circumstances. Depending on quantity and whether it is being sold or simply consumed, one may be charged with a misdemeanor or felony.

1. The Alabama Criminal Code sections on firearms do not directly address the possession of a gun while under the influence of cannabis. HOWEVER, Under Title/Section 13A-11-72 (criminal code), no person addicted to drugs or habitually intoxicated may own or possess a pistol. Any person in violation of Alabama 13A-11-72 may be arrested and upon conviction, subjected to a term of imprisonment of not more than five years. The pistol will be seized and may be forfeited by court order.

Under Title 13A-11-70, the manufacture or distribution of a controlled substance is considered a "crime of violence." One convicted of such a crime is forbidden under Title 13A-11-72 to own or have in one's possession or under his or her control a pistol. Of course, this would preclude him from obtaining a concealed carry permit. A citizen who possesses a license to carry a concealed pistol under 13A-11-75 is subject to review by the issuing county sheriff. The sheriff may revoke the concealed carry permit when he demonstrates actions by a permit holder that create "justifiable concern for public safety." Under 13A-11-76, no one may deliver a pistol to a drug addict or habitual drunkard or one of unsound mind.

2. Assuming the cannabis user is able to defend himself legally in a public place, he could still be arrested for

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public intoxication by a responding peace officer who is alert enough to recognize the odor of marijuana that is being or has been recently used. Most officers responding to the scene of a self-defense confrontation or shooting would likely frisk the person who has the gun before he/she attempts to determine what actually happened. That may result in an arrest for possession of a controlled substance. A cannabis user making a mistake in judgment due to intoxication and illegally threatening or shooting a person while under the influence could be charged from a range of misdemeanors including harassment and simple assault to felonies such as criminally negligent homicide and murder if the victim succumbed to injuries from an illegal use of force.

3. While federal officers may enforce 18 U.S.C. 922(g)(3), it is not typically used by local or state officers in Alabama acting in the absence of federal agents since involvement of the US Attorney would be required. As noted above, the provisions of Alabama Code 13A-11-72 and 13A-11-76 allow state charges in cases of a handgun being possessed by "one addicted to drugs."

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1. Do your state laws address gun possession while under the influence of cannabis?

Not directly. However, if one loses the ability to possess a firearm, one also loses the ability to get a CHP (Concealed Handgun Permit). Also, if "under the influence" while hunting or in an establishment licensed for on-premises consumption of liquor, impairment is a crime. It might also be "reckless conduct."

See: <http://www.mainelegislature.org/legis/statutes/17-A/title17-Asec1057.html> and
<http://www.mainelegislature.org/legis/statutes/12/title12sec10701.html>

Also: <http://www.mainelegislature.org/legis/statutes/17-A/title17-Asec211.html>

Note, however:
<http://www.mainelegislature.org/legis/statutes/22/title22sec2423-E.html> -- This arguably insulates mere

possession from STATE legal penalty. Put hand to gun, however, and lots of bad things might happen with a prosecutor.

2. What issues might you anticipate arising following self-defense gun use by a legal marijuana user?

First, "shot persons" and prosecutors, to the extent dependent on judgment or perception, will argue the individual was not factually justified, despite his perception. A corollary of this is the claim that the belief needed for justification was not "reasonable."

Even "recent" use can be a problem, given the persistency of both metabolites and neurocognitive effects of cannabis. Twenty eight days "might" be enough post-use recovery period. It is unclear whether it is enough to remove "user" status.

INTERESTING: If someone was impaired enough, and there was other extrinsic evidence of degree and reality of threat, a "lawful" cannabis user (if there is such a thing) might claim his ability to physically resist was impaired. Therefore, DEADLY force might be MORE justified (as where potential victim is a cancer victim being robbed for Fentanyl patches.)

Generally, I would consider cannabis possession or use to be a negative factor in successful outcome for the firearm user.

3. What enforcement action could arise from 18 U.S.C. 922(g)(3) prohibiting firearms or ammunition possession by one who is "addicted to any controlled substance?"

Here's the list:

Prosecution for possession of firearm by a prohibited person; Prosecution of anyone who transferred the firearm; Basis for search warrant of shooter's dwelling, etc., more difficulty in making bail following initiation of action; In rem action for civil forfeiture of all firearms-- and your marijuana.

Then there's the DEA stuff . . . Possession of a firearm during a drug trafficking offense is a serious sentencing enhancement factor.

<https://www.law.cornell.edu/uscode/text/18/924>

I tell people that they should make a choice. If you use MJ, no guns -- AT ALL. If you possess guns, no MJ --

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AT ALL. The current administration in Washington is NOT friendly to gun owners. There is generally a non-MJ medication for almost every condition—use those.

Steven M. Harris

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I think the federal law applies to anyone currently using illegal substances, not just those addicted, and it is tested under federal, not state law as to what is an illegal substance. Note also the federal ban on possession includes, until the Supreme Court says otherwise, the notion of “constructive possession” asserted by the government in cases. So a gun in the house is a problem unless the drug user cannot get to it.

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Here's the answer to the question. Using medical marijuana makes you a federally prohibited person in the view of one half of the Justice department:

<http://www.nssf.org/share/PDF/ATFOpenLetter092111.pdf>

and it doesn't matter according to the other half:

<http://www.justice.gov/sites/default/files/opa/legacy/2009/10/19/medical-marijuana.pdf>

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In Idaho marijuana is illegal to possess or to smoke, so the law here does not address gun use while under the influence of cannabis. The same defenses used in alcohol-related gun defense would be expected in the instance of cannabis related gun defense, if such were legal.

The federal question is tougher to prosecute, because the prosecutor would be required to show that marijuana is addictive to the specific defendant. The following article addresses the fact that most people do not

develop addiction to marijuana.

<http://www.drugabuse.gov/publications/research-reports/marijuana/marijuana-addictive>

In states where marijuana use is legal, the federal issues, while they can still be prosecuted, would likely not be brought, in favor of simple prosecution on use of deadly force while mentally impaired.

Tim Evans

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Ohio prohibits possession of a firearm while under the influence of drugs or alcohol. Marijuana is not legal in Ohio, but there is an effort to put medical and recreational use on the November ballot.

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My state (Alaska) has legalized medical marijuana and recreational marijuana. Our state prohibits possession of a firearm “when the person’s physical or mental condition is impaired as a result of the introduction of an intoxicating liquor or a controlled substance into the person’s body.” We have no legislation deciding what level of marijuana metabolites in the blood constitutes an “impaired condition,” unlike alcohol.

Using a self-defense firearm while a legal marijuana user could create a lot of complications, I believe. This would likely be very fact specific, but if someone is outside their own home and they use a firearm after an argument, they would likely face substantially more scrutiny than if they were in their own home and used a firearm to protect themselves from a person or persons who break in to steal marijuana or money.

The biggest issue I could see the state arguing about is someone’s perception. To use self defense, the degree of force must be objectively reasonable. If a person was impaired by marijuana use, that impairment could skew their perception of what is a reasonable amount of force to use. Generally, marijuana makes people more mellow and relaxed than alcohol, which can get some people angry. I have seen similar cases in which the use of a firearm after consuming alcohol was prosecuted

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because the state argued that the alcohol affected a defendant's perception of the degree of force needed. Given the little actual scientific information we have regarding the effects of marijuana upon the person, I would anticipate that a defense would involve many costly experts and an outcome would be hard to predict.

This last question is a real danger. Most of my practice in Alaska and all of my practice in Washington is in federal court. At present, the DEA and the FDA both take the position that marijuana has no recognized medical value and that any use is illegal use. Thus, a person who purchases a firearm from a licensed dealer should disclose if they recreationally use marijuana. Otherwise, people have been prosecuted for making false statements on a firearm application. Unfortunately, this would mean that your firearm purchase would be denied. Likewise, some people have been prosecuted when they are registered firearm owners but are also on a list of medical marijuana patients. While there is proposed federal legislation that would provide some protection from prosecution, at this point, federal law makes it pretty clear that individuals have to choose between firearms and marijuana. If you want to keep your firearms and avoid federal prosecution, my legal advice is to avoid marijuana completely. And if you need marijuana for a medical condition, I would advise you to not possess or use any firearms.

It is true that if you use marijuana and possess a firearm you will likely not get caught. If you look at the number of people who smoke marijuana, medically or recreationally, and at the number of people who own firearms, there have to be several hundred thousand, if not a few million, of people who belong to both groups. It is highly unlikely that the federal government will prosecute each and every one of them. However, I would never counsel someone to violate the law. A conviction could mean that you lose a concealed carry permit, depending upon the laws of your jurisdiction.

Further, a federal prosecution is substantially different from a state prosecution. The feds have resources that make defending a federal charge formidable. Also, their charging policies are set in Washington to be more consistent across the country. I find federal prosecutors do not have as much negotiating room as state prosecutors, but that could just be based upon the districts in which I practice. Thus, even if the odds are low that you would actually be caught, the downside of a federal prosecution is a tremendous downside.

A big "Thank you!" to each Network affiliated attorney who responded to this question. Readers, please return next month for a new topic of discussion.

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

Criminal and Civil Jury Instructions in a Self-Defense Case

by George M. Lee, Esq.

Both sides rested their cases. And with all of the jurors leaning forward with focused anticipation, it fell to the moment that many lawyers live for: closing arguments. Each attorney then rose to the occasion, skillfully delivering closing arguments, laying out the evidence in a logical fashion, leading to an emotional crescendo, and an impassioned plea to the jury to “use your common sense” in delivering a fair and just verdict. And then the lawyers sat down. Those lawyers, and perhaps the defendant, lost in the residual emotion of the moment, may not have heard what was said next. The adrenalin was so strong, they could almost hear it swishing through their ears as the judge started to speak.

What the judge was doing, before the case officially went to the jury, however, was instructing the jury on the law. Following that law was something each juror swore they would do, applying the facts they found to the law of the case.

And what the jury in this case was going to be instructed, a case involving self defense, depended on whether it was a criminal or a civil case. But in either case, and irrespective of the burdens of proof about which the judge was about to instruct the jury, we hope the defense attorney’s argument was the same: My client was an armed, responsible citizen, acting reasonably under the circumstances, and we have proven that he is innocent of wrongdoing.

Most lay persons know that there is a difference between criminal and civil cases, and that each have different burdens of proof. In a criminal case, the prosecution has the burden of proving each element of the charged crime, beyond a reasonable doubt. *People v. Cole*, 33 Cal.4th 1158, 1208, 17 Cal.Rptr.3d 532, 573 (2004). It is enough for a jury in California to simply be instructed that a defendant in a criminal case is presumed to be innocent, and that to overcome that presumption, the prosecution must generally “prove a defendant guilty beyond a reasonable doubt.”¹ The trial judge will further instruct the jury that “[w]henver I tell you the People must prove something, I mean they must prove it beyond a reasonable doubt.” (*Jud. Council of Calif. Crim. Jury Instruction (CALCRIM) 220.*)

In California, and elsewhere, it would be error for the trial court to give any instruction to the jury in a criminal case that shifts the burden of proof to the defendant, i.e., to prove that a homicide had been committed in self defense. See *People v. Banks*, 67 Cal.App.3d 379, 383-84, 137 Cal.Rptr. 652 (1976); *Mullaney v. Wilbur*, 421 U.S. 684, 704, 95 S.Ct. 1881, 1892 (1975) (striking down a Maine statute which affirmatively shifted the burden of proof of justification for a homicide to the defendant.)

Thus, in a homicide case, where the defendant has asserted self-defense, or the defense of another, the jury will usually be instructed as follows:

CALCRIM 505

The defendant is not guilty of murder if he was justified in killing someone in self defense [or the defense of another]. The defendant acted in lawful self defense [or the defense of another] if:

1. The defendant reasonably believed that he [or someone else] was in imminent danger of being killed or suffering great bodily injury;
2. The defendant reasonably believed that the immediate use of deadly force was necessary to defend against that danger;
AND
3. The defendant used no more force than was reasonably necessary to defend against that danger. (*CALCRIM No. 505 – Justifiable Homicide: Self-Defense or Defense of Another, Rev. 2012.*)

In other words, the three primary parts to the defense, boiled to its essentials, are: (1) the reasonable belief of death or great bodily injury; (2) the reasonable belief in the necessary use of force; and (3) the use of force was no more than reasonably necessary under the circumstances.

In assisting the jury to decide what is and is not reasonable under these three core principles, the jury

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will further be instructed as follows:

Belief in future harm is not sufficient, no matter how great or how likely the harm is believed to be. The defendant must have believed there was imminent danger of death or great bodily injury to himself [or someone else]. Defendant's belief must have been reasonable and he must have acted only because of that belief. The defendant is only entitled to use that amount of force that a reasonable person would believe is necessary in the same situation. If the defendant used more force than was reasonable, the killing was not justified.

When deciding whether the defendant's beliefs were reasonable, consider all the circumstances as they were known to and appeared to the defendant and consider what a reasonable person in a similar situation with similar knowledge would have believed. If the defendant's beliefs were reasonable, the danger does not need to have actually existed.

Finally, on the issue of the burden of proof, the jury in a criminal case would be instructed as follows:

The People have the burden of proving beyond a reasonable doubt that the killing was not justified. If the People have not met this burden, you must find the defendant not guilty of murder.

In the trial of a non-homicide case, the instructions will be very similar, though not necessarily limited to the defense of the danger of being killed or suffering great bodily injury. The jury will likewise be instructed that: "The defendant is only entitled to use that amount of force that a reasonable person would believe is necessary in the same situation. If the defendant used more force than was reasonable, the defendant did not act in lawful self defense." (CALCRIM 3470.)

The instructions may also be tailored to the specific facts of the case, including differing charges other than homicide (such as attempted homicide). Depending upon the circumstances, as further examples, and if the instructions are supported by evidence, the jury may also be instructed regarding any evidence of prior threats, as follows:

If you find that the decedent threatened or harmed the defendant [or others] in the past, you may consider that

information in deciding whether the defendant's conduct and beliefs were reasonable.

If you find that the defendant knew that the decedent had threatened or harmed others in the past, you may consider that information in deciding whether the defendant's conduct and beliefs were reasonable.

Someone who has been threatened or harmed by a person in the past, is justified in acting more quickly or taking greater self-defense measures against that person.

If you find that the defendant received a threat from someone else that he reasonably associated with the decedent, you may consider that threat in deciding whether the defendant was justified in acting in self defense [or the defense of another].

In a "stand your ground" situation, if supported by state law (as it is in California), the jury would be instructed as follows:

A defendant is not required to retreat. He or she is entitled to stand his or her ground and defend himself or herself and, if reasonably necessary, to pursue an assailant until the danger of death [or great bodily injury] has passed. This is so even if safety could have been achieved by retreating.

And finally, if there is a question about the meaning of "great bodily injury," if not apparent, the jury would be told:

Great bodily injury means significant or substantial physical injury. It is an injury that is greater than minor or moderate harm.

If the homicide occurs in the defendant's home, the defendant may gain the benefit of a "castle doctrine" instruction, such as that existing under California law. The jury would specifically be instructed as follows:

CALCRIM 3477

The law presumes that the defendant reasonably feared imminent death or great bodily injury to himself [or to a member of (his/her) family or household] if:

1. An intruder unlawfully and forcibly entered [or was entering] the defendant's home;

Continued...

2. The defendant knew [or reasonably believed] that an intruder unlawfully and forcibly entered [or was entering] the defendant's home;
3. The intruder was not a member of the defendant's household or family;
AND
4. The defendant used force intended to or likely to cause death or great bodily injury to the intruder inside the home. (*CALCRIM No. 3477 - Presumption That Resident Was Reasonably Afraid of Death or Great Bodily Injury (Pen. Code, § 198.5)*)

On the issue of burden on this instruction, the jury will be instructed as follows:

The People have the burden of overcoming this presumption. This means that the People must prove that the defendant did not have a reasonable fear of imminent death or injury to himself [or to a member of his or her family or household] when he used force against the intruder. If the People have not met this burden, you must find the defendant reasonably feared death or injury to himself [or to a member of his or her family or household].

Civil Jury Instructions

In civil cases, of course, private parties are suing other private parties, usually seeking monetary damages, and the attendant burdens of proof are much less stringent. The civil jury instructions regarding self-defense matters are relatively straightforward. In California, under the Calif. Jud. Council Civil Jury Instructions (CACI), after being instructed what is required for the plaintiff to prove an assault or battery in a civil matter, the jury would be instructed:

CACI 1304

Defendant claims that he is not responsible for plaintiff's harm because he was acting in self defense [or the defense of another]. To succeed, **the defendant must prove the following:**

1. That defendant reasonably believed that plaintiff was going to harm him [or other person]; and
2. That defendant used only the amount of force that was reasonably necessary to protect himself [or other person]. [*CACI No. 1304 – Affirmative Defense of Self*

Defense/Defense of Others, Rev. 2014 (emphasis added.)]

Most notably, and as emphasized, it would be the defense bearing the burden of proof that these two elements are met. That is because the defense of self defense, in response to a claim of assault is what is called an "affirmative defense." And as an affirmative defense, it is the defendant's burden to prove facts supporting the affirmative defense, by a preponderance of the evidence. *Bartosh v. Banning, 251 Cal.App.2d 378, 386, 59 Cal.Rptr. 382 (1967)*. In other words, in order to avoid liability, the defendant must prove that he acted reasonably, in self defense, under these instructions.

In Either Case, Assume You Have The Burden Of Proof

So only in a civil case, do you bear the burden of proof on self defense, right? And even if you do bear the burden of proof in a civil case, the burden of proving the case by a preponderance of the evidence is slight, right? This may be true, but only in theory.

To demonstrate that theory, for example, a plaintiff's lawyer in a civil case often will resort to an old-school visual graphic of the scales of justice with a feather on one side, to demonstrate how slight a preponderance of the evidence is. This was even done recently by a well-regarded plaintiff's attorney in a high-profile sex discrimination case. Yet, as Judge Ralph Adam Fine observed in his book on winning trials: "The problem is, of course, that the burden of proof in a civil case comes into play only when the decision-maker is in total balance. That never happens." (Fine, *The How-To-Win Trial Manual*, p. 62 (4th ed. 2008.)) And thus, in that same high-profile discrimination trial which ultimately resulted in a defense verdict, one of the jurors later remarked in a post-trial interview that the plaintiff simply didn't have enough evidence: "It was her case to win, not theirs to lose," he said.

Therefore, you must not rely on the relaxed burden of proof in a civil case simply to assume that your burden will easily be met. In a self-defense case in particular, as the primary party accused of causing harm to another, you and your attorney must fully commit to proving your innocence, offensively and not defensively, and without

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regard to the weight of that burden. And in fact, that way of thinking may not be limited to civil cases. As practitioners Gianna and Marcy advise, in their treatise on opening statements, maybe the burdens of proof exist in the world of legal theory, but in the real world, and practically speaking, “[j]urors come to the courtroom believing that both sides have to prove their case. Why is the defense any different from the plaintiff or the state, so say jurors. The conclusion, the defense has a burden of proof, a high one.” Gianna and Marcy, *Opening Statements* § 11:4 (Thompson Reuters/West 2013-2014 ed.).

Whether a civil or a criminal case, therefore, I submit that the burden to prove your innocence is yours, and yours to meet convincingly. The burden of proof is always important to argue, of course, especially in a criminal case to emphasize the existence of reasonable doubt. But in either case, a person unjustly accused of harming another, in excess of what the law allows, must prove that he or she acted reasonably, and must do so convincingly. If you are on trial, you were undoubtedly

the armed, responsible citizen, acting reasonably under very stressful circumstances. Your attorney should not hide behind a burden defensively, but must be willing to rise to the challenge of meeting and exceeding that burden.

Footnotes:

¹ An express instruction to the jury that the prosecution's burden as to “each element” of the crime, although practiced in many states, has been held not to be Constitutionally required in California. *People v. Ramos*, 163 Cal.App.4th 1082, 1088, 78 Cal.Rptr.3d 186, 191 (2008).

The author, Network Affiliated Attorney George M. Lee, is a partner at SEILER EPSTEIN ZIEGLER & APPLGATE LLP (<http://www.sezalaw.com>) a San Francisco law firm, where he handles civil litigation matters in state and federal courts. Mr. Lee was formerly an Assistant District Attorney for the city and county of San Francisco and continues to handle select criminal matters.

DVD Review

Make Ready to Survive: Short Term Prep & Plan

Panteao Productions, LLC.
701 Gervais Street, Suite 150-193
Columbia, SC 29201
803-978-2629

<http://panteao.com/product/make-ready-survive-short-term-prep-plan/>
Length: 135 minutes; Format:
widescreen DVD—\$24.99



For quite some time now Panteao Productions has been the source for firearms and tactics lectures on DVD, presented by various industry professionals, and focused on increasing armed citizens' knowledge, skill and preparation. Late last year, Panteao added another line to their many, many DVD programs. *Make Ready to Survive* addresses what has popularly come to be called prepping, encompassing everything from long-term food storage to self-help medical training to weapons and tactics to defend homestead and family during a societal break down, and a lot more. It is a big subject.

Many Network members are well prepared for the defense aspect prepping embodies, but have trouble tackling the accumulation of supplies to make it through a week or two without electric power, let alone cope with several months of service disruption. Indeed, the daunting challenge of providing for one's self and family for several months off the grid is likely the reason many fail to stock enough water, a Coleman stove and fuel and a 10 pound bag of beans. The problem is too big and so we get stuck. That's why I was so pleased when I saw *Short Term Prep & Plan*. It was just what I wanted: advice on how to get through the first week of an emergency. The experts who present this program often add details about provisioning for longer time periods, too, but the focus is generally on a week or two.

This Panteao *Make Ready to Survive* program is a team-teaching effort, with Jim Cobb, Kyle Harth, Paul Howe, Dave Canterbury and N.E. MacDougald weighing in on both general and specific preparations, supplies and equipment. Cobb leads the discussion, first asking the viewer to consider how to communicate with and gather up family members who are in varied locations at the beginning of an emergency. This includes making sure the right people are named on permission slips to remove your children from school to deciding how best to provide for the needs of elderly loved ones if their

care facility goes dark, and even how you will keep safe pets which often are not allowed in emergency shelters. Cobb does more than raise questions; he also offers various options to get the viewer thinking of what they may be able to implement, like identifying pet-friendly motels in advance should you need to shelter there if turned away at public shelters.

Determine food and water needs before they arise, Cobb advises next. Those new to prepping may find it easier to buy just a little extra in the dried and canned food sections while shopping for groceries each week, he suggests. Introducing quantities and kinds of food to store, he gently points out that Americans tend to over eat, but you should cut it back to actual nutritional requirements when laying in supplies for an emergency, he advises.

It is best to overstock on water, he urges. The standard of one gallon of water per person per day fails to cover sanitation, cleaning and cooking, so when storing water, increase it to at least one and one-half gallons and preferably two gallons per person per day, he recommends. Dehydrated or freeze-dried foods require water to render them edible, he adds.

Prescriptions and first aid kits are among short-term needs. Cobb notes, for example, that a well-stocked first aid kit is generally enough for a three-day power outage, and that eliminates excuses for put off getting those supplies because you probably don't need to hold out for an expensive full-blown trauma kit. Later, instructor Kyle Harth addresses first aid in greater detail, explaining what to accumulate, what to carry it in and what to take along if you need to leave home to get through, "times of duress." He discusses commercial first-aid kits that "should go with you wherever you go," including medical tape, gauze patches and triple antibiotic ointment. Add a bug sting kit (unless severe allergy requires you to carry an epinephrine auto injector) then wrap it up in a waterproof bag or box to prevent damage to the supplies, he adds. The DVD includes a lot more very useful information about larger collections of medical supplies and other tools Harth recommends carrying in your vehicle.

During power outages and other short term disruptions, you are likely to remain in your home area, Cobb teaches, so plan for communications and how to power up phones, computers, tablets. Once an electrical

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outage extends beyond a couple of days, cooking and heating can get pretty critical. Alternative off-grid cooking options are the topic of the next segment with N.E. MacDougald explaining a wide array of choices, giving a nod to the ubiquitous home outdoor grill and the portable Coleman grill fueled by a smaller propane bottle. He demonstrates a single burner that screws directly onto a one pound propane bottle and a brass connector with which to recharge one pound bottles from standard-sized camper and grill propane tanks.

MacDougald weighs pros and cons for white gas burners and for thermo electric generation devices, demonstrating several: parabolic reflectors to concentrate the sun's heat to boil water, solar buckets, and other burners that can be fired with pinecones or deadfall wood. This is supported both by website references at the end of the program and on a printed sheet inside the DVD box to help viewers find the recommended products. Cobb concludes this segment by observing that boiling water and cooking food not only keep body and soul together, being able to warm up over hot food is a great morale booster.

Paul Howe discusses longer power outages, citing pros and cons for gas, diesel or propane generators. He prefers propane because the tank is large enough to fuel power generation for a week. Smaller generators can at least keep your freezer and refrigerator running, he adds. A small apartment may survive on solar chargers, unlike a larger house that has to keep freezers and other services running. He explains solar panel/battery pack products for sunny climates. "Keeps your phones and comms up: that is critical," he states. He demonstrates battery supply, solar charger, flashlight device and other compact solar collector/battery products.

MacDougald demonstrates a larger solar charger to fill a substantial battery, adding that apartment dwellers need silent power. These charger/battery arrays can be purchased, or if you're "handy," to use his words, you can make your own and mount it on a handcart. Solar collection and batteries for "silent, free fuel" are important, he advises, because in an emergency, gas or other fuel is in short supply.

MacDougald also addresses personal security, starting with improvised weapons that are "better than nothing." Carry a cane, he recommends, "Even TSA will let you through with a cane! The stronger, the heavier, the better," he urges, and also recommends carrying a Kubotan or small, thin flashlight for to improvise as a

yawara (short stick). "Be observant," he urges. "Your life depends on it."

Harth echoes his advice when he discusses getting cash out of your bank account under emergency conditions. Remember, the bad guys know that people need to get cash in an emergency, he explains. Select a safe ATM, go armed and keep your gun hand free, have your bank card in hand, know the account you are going to access, how much you will request, and then drive through the parking area first to look for trouble. If there's no line at ATM, go straight to it and look around while using the ATM, checking reflective surfaces to look behind and around without attracting attention. Don't pause, he teaches, just put the money away and get into the car. Lock the car doors, drive away and get the vehicle moving as you buckle the seat belt.

Harth also addresses motel security, room location, locks, fire suppression and stairwell escape routes, advising travelers to stroll through and locate these and other features before settling in to an overnight motel stay. Paul Howe weighs in on personal security while traveling. As a traveling trainer, he uses a lot of hotels, he explains, and talks about where to park, traffic flow for entry and exit travel, plus a lot more. He recommends filling the fuel tank at day's end to avoid having to wait your turn at the gas pump while fleeing. Plan the morning's routes the night before, he adds.

Short Term Prep & Plan is a wide-ranging lesson outlining preparatory steps to get through short-term emergencies and longer lasting disaster conditions. This review just scratches the surface and I don't have space to mention highlights from the instructors' advice about communications, caring for vulnerable neighbors, morale boosters, asset security (hint: get a good safe), protecting important documents, knives, hatchets and other equipment, and a great deal more.

I liked this informative DVD a great deal. Coelho and Panteao Productions deserve credit for bringing out an excellent companion line to their many gun and self-defense lectures on DVD and streaming video. The *Short Term Prep & Plan* program gives the viewer a lot to think about and easy-to-do preparatory and planning steps. The team-teaching approach is effective, as the various experts describe their piece of the puzzle from their own individual experiences, and although there are overlaps in small amounts of the material, it all comes together in a cohesive, actionable set of lessons.

[End of column.

Please enjoy the next article.]

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News from Our Affiliates

Compiled by Gila Hayes

A big thank you to all of our affiliates and friends who came by for a visit at the Network's booth at the NRA Annual Meeting and Exhibits a few weeks ago. It is so nice to put faces with names, to have the chance to talk out questions that have arisen and to learn about what our affiliates do.

The other really positive thing that happened in Nashville at the NRA meeting was the chance to meet and discuss the Network's mission with NRA member attorneys who were attending the event. New contacts that have borne fruit include a new Affiliated Attorney in the District of Columbia, Stephen Sulzer. I enjoyed speaking extensively by phone with Mr. Sulzer after the meeting and am pleased to tell our members in the District and bordering states that he is onboard with the Network and shares our enthusiasm for supporting members after self defense. To learn how to contact him or other Network Affiliated Attorneys, members need to log in to www.armedcitizensnetwork.org, then select the link marked Affiliated Attorneys, which is the second link from the top in the menu box on the right side of the Members webpage.

During the NRA Annual Meeting, we also met and set up an affiliation with attorney Charles Bobbitt of nearby Hendersonville, TN, and are proud to welcome Mr. Bobbitt as a new Affiliated Attorney. Members, we are always looking for gun-friendly defense attorneys whom we can invite to share our passion for defending Network members after self defense. If you would like to recommend a criminal defense attorney of your acquaintance, please send me an email (ghayes@armedcitizensnetwork.org) with their name, the city and state they practice in, and any other details you can share. If it all checks out, I will reach out to the attorney with a professional business letter explaining the Affiliated Attorney facet of the Network and invite him or her to become part of our organization. This is how we grow stronger.

Doing just that, our Affiliated Instructor Jim Trockman stopped by to visit when we were in Nashville, and among the topics on his agenda was the recommendation of an attorney he holds in high regard who practices in Evansville, IN. In addition, right before we headed out to Nashville, a number of Network members and Affiliated Instructors responded to a

special inquiry I put out asking for recommendations for gun-friendly defense attorneys in WI. As a result, we are delighted to extend a very warm welcome to attorney Thomas Grieve who practices in Brookfield, WI. Members, this is Networking at its best, so if you have a recommendation, please don't wait, send it over to me.

Thomas Berry of Defensive Handgun Enterprises, in Kansas City, MO has one of his special Tactical Handgun classes scheduled this month, with the classroom element taught on the evening of May 12 and the range instruction the following Saturday, May 16th. In this program, Tom introduces students to tactical shooting and self-defense techniques and notes that he also sees skilled students joining the class for practice and to refresh skills under his tutelage.

"Self defense with a handgun is a perishable skill and needs to be practiced frequently," Tom explains. Range exercises are conducted on steel and paper targets, and drills include fighting while exiting a vehicle as well as a class competition. For further details, see his website at <http://www.defensivehandgunenterprises.com> or email him at tberry2@kc.rr.com.

Take a look at the webpage Steve Bischoff built for his business, BoJax Shooting School in Bluffton, SC. It is a great looking website and we really appreciate his inclusion of the Network in his organization links right on the front page at <http://www.bojaxshooting.com>. It is also fun to see how many of our other Network members figure prominently in his picture gallery -- John Farnam and Tom Givens to name only a few. Steve teaches the program required to get your SC concealed weapon permit on the first weekend of every month, and can also teach gun safety, basic pistol, combat pistol, close range gun fighting, defensive carbine, shotgun, skills development for competition and more. For details, call Steve at 843-757-7272 or use the contact form on his website.

Justin d-Brantingham of RAM Defense in northwest MN recently got more of our Foundation's booklet *What Every Gun Owner Needs to Know About Self-Defense Law* for his concealed carry students. Learn more about Justin's efforts at <http://www.ramdefense.com> or browse the posts on his Facebook page at <https://www.facebook.com/RAMDefenseLLC> or give Justin a call to schedule a class at 218-452-0092. He's got a MN concealed carry license class coming up later this month on May 23rd and is available for private

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lessons. In addition to concealed carry licensing classes he can provide NRA Pistol and NRA Refuse to be a Victim programs, too.

Network Affiliated Instructors Robyn and Jeff Street have turned Step by Step Gun Training into quite a diversified business over the past few years. Their unrelenting focus on gun safety and training to build firearms skills continues through their classes, whether that is their dry fire sessions or women's programs or low light and other tactical drills and experiences. If you're in the Naples, FL area, get to know Robyn and Jeff at <http://stepbystepguntraining.com>.

Over in UT, Network members will find their fellow member Paul White operating My Favorite Gun Store in Richmond, UT. Paul is also a cabinet maker, but he loves guns and enjoys teaching folks in his community gun safety and how to shoot well. His concealed carry permit classes are priced reasonably, and all he needs is for you to round up at least five people and he can put together a class for your group. Learn more about Paul at http://www.myfavoritegunstore.com/Home_Page.html or email him at myfavoritegunstore@gmail.com, his favorite form of communication.

Randy Wilson and his team at Central Defense Group teach both the 16-hour Illinois Concealed Carry training requirement, but also an introduction to pistol that is appropriate for beginners who just want to become familiar with firearms. They're located in Galesburg, IL and have lots of information on their website at centraldefensegroup.com or on Facebook at <https://www.facebook.com/CentralDefenseGroup>.

Robert and Robin Keating, under the aegis of Empowerment Firearms Training, LLC. in Ft. Worth, TX teach a variety of courses ranging from the TX concealed handgun license class, to beginning handgunning, an introduction to shooting IDPA, defensive handgunning fundamentals and a class entitled The Responsible Armed Citizen, that promises "insight into the practical, legal, and ethical issues that face the armed citizen," through an exploration of equipment selection, aftermath issues, use of force law and "factors the responding police officers, prosecutors, and jury members will use to determine the reasonableness of your actions." Details are at <http://www.empowermentfirearmstraining.com/index.php/training>

Network member Al LaBiche recently alerted us to the fact that he is certified to teach the Mississippi concealed carry license training, which he offers as an eight-hour course during which he gives students copies of our Foundation's booklet. For info about training, call Big Al at 662-401-0983 for appointments and pricing or read more at <http://bigalsauto.com/big-als-pistol-training/>.

Ron Terenzi at Home Defense Solutions in Bristol, ME is an avid supporter of the Network. You can't beat the kind of personal endorsement of the Network that he gives his clientele at <http://www.hdssports.com/armed-citizens-legal-defense-network-i-62.html> in which he urges the reader to go to the Network website and learn about the importance of membership. "You'll thank me later!" he advises his clients. He teaches courses in both hand-to-hand defenses, firearms safety, the UT non-resident concealed carry license training, defense shotgun skills, close quarters shooting and more. See <http://www.hdssports.com/training-i-56.html> and if you're in this far northeast corner of our great nation, get to know Ron and his crew, whether for training or to shop his gun counter.

David Baird's outreach on behalf of the Network is split between his monthly home firearms safety classes (<http://www.idcfirearms.com/training.html>), which fulfill the MA licensing training requirement, and contact with folks who come in to IDC Firearms for a new or used gun or any of the myriad accessories for which armed citizens are always looking. With a substantial gun counter, the buyer should be able to find what he or she needs! If you are in the Clinton, MA area, stop by and get to know Baird and his crew, and support a fellow Network member who is supporting all of us in the Network by bringing in new members.

Affiliates, please email me to order more copies of the Armed Citizens' Educational Foundation's booklet *What Every Gun Owner Needs to Know About Self-Defense Law* and our tri-fold Network membership brochures or call us at 360-978-5200 to tell us how many you need. Remember, too, this column is the perfect place for you to let other Network members know about any special events like open houses, special classes or other interesting tidbits you'd like to share. I'll appreciate about 60 days lead time for event announcements, so send me your notices early, please.

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

May 2015



Editor's Notebook

Mission Possible

by Gila Hayes

At the Network we spent most of April serving our ever-larger membership, with the NRA Annual meeting membership recruitment efforts and our new advertisements bringing in many new members. Just seven years after starting the Network to fulfill Marty Hayes' vision of a supportive membership organization of armed citizens standing together when one was singled out for prosecution after using force in self defense, we have the means to fully fund a member's legal defense after legitimate self defense. Reaching milestones, though, is never the end of all the late nights and worry lines. A milestone like the Network's half-million dollar Legal Defense Fund balance only heralds new tasks, challenges and goals.

We treasure our Network members who understand that surviving the self-defense legal aftermath is a lot more than just paying for a highly-skilled legal team. These members also understand that individual knowledge and preparation results in members who are less likely to make missteps, either in the actual use of force or in defining why that use of defensive force was necessary when questioned afterwards.

To that end, our Network membership education package has grown from the three foundational lectures on DVD we distributed during our first two years, to a full library of eight lectures on topics ranging from use of deadly force to use of non-lethal self defense methods, discussions of how to navigate the immediate aftermath of a self-defense shooting, the legal defense of self defense, pre-attack indicators so we can articulate why we perceived a deadly threat, physiological and psychological realities that occur during and after critical incidents and more. In 2014, we added to that library, Massad Ayoob's excellent new book, *Deadly Force: Understanding Your Right to Self Defense*, which consistently receives high marks from members.

While providing that educational package carries a price tag, member education is an important investment that protects the Legal Defense Fund. Since we started the Network in 2008, only eleven members have needed attorney fees paid after self defense, so the value of that investment is readily apparent. But, what about that

investment? If members are doing so well avoiding trouble, why have we worked so hard to build up the Legal Defense Fund?

The world is imperfect. In the lead interview to this journal, Andrew Branca spoke about "the cleanest self-defense shoot I have ever seen," when he explained how a political prosecution occurs when there are few facts for a prosecutor to attack. For 18 months, the press and politicians stirred up all kinds of accusations about George Zimmerman's self-defense shooting, he illustrated. That's just one example of our imperfect world and why we must continue to build up the Legal Defense Fund.

Reaching the half-million dollar mark and pushing forward to the next natural goal—a one million dollar balance in the Fund—is a multi-faceted effort. Network Vice President Vincent Shuck solicits merchandise donations that he auctions to raise money for the Legal Defense Fund, an effort he has undertaken since our early days. You read his auction announcements occasionally in our monthly membership email. We owe a debt of gratitude to the gun accessory and ammunition manufacturers who have supported our organization through their product donations, and to Vincent for spearheading this fundraising.

Individual members have also done much to grow the Fund. In addition to 25% of all new and renewing membership dues, many members round up their dues checks or contribute an extra \$25, \$50 or \$100 to the Fund online. We keep this fundraising very low-key (resolving never to bombard you with pleas for money), but we do have a "contribution" e-commerce item at <http://www.armedcitizensnetwork.org/contribute>) and the membership renewal requests mailed out the month before your membership expires includes a line inviting voluntary additional contributions to the Legal Defense Fund.

Every week, as these roll in with amounts donated varying according to each member's ability, I send out thank you notes and emails. I am as grateful for the extra \$5 added to a member's renewal check as I am for the \$100 contribution that recently came in with a new membership purchase. Each gets a heart-felt thank you email and it is fun when the members send back a little reply of his or her own.

Continued...

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"You're very welcome, Gila," wrote one long-time member recently. "I'm glad the 1/2 mil milestone was reached. That's an accomplishment to be proud of. I'm so glad you guys made the effort to initiate this service and have such rock stars on the Advisory Board. I, like others, value your service highly. But I hope I never need you!"

The last is a long-standing joke between the members and me. When members phone in, I'll thank them for calling and as often as not, the member will quip, "Well, I just hope I never have to call you 'for real'"—to us to pay their attorney. I generally reply that we'll just have to be happy hearing from them once a year when they call in to renew their memberships. It is a nice and friendly way to let members know how much we appreciate their

membership renewals and continued support of the Network.

That's the bottom line: being ready, able and waiting to provide the post-incident support to members, while being grateful every day during which one of you does not have to fend off a criminal's evil intentions. We at the Network will continue doing what we do to be ready to support you. The recent Legal Defense Fund milestone is only our first big accomplishment.

*[End of May 2015 eJournal.
Please return for our June edition.]*

About the Network's Online Journal

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

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

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

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

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

Marty Hayes, President

J. Vincent Shuck, Vice President

Gila Hayes, Operations Manager

We welcome your questions and comments about the Network.

Please write to us at info@armedcitizensnetwork.org or PO Box 400, Onalaska, WA 98570 or call us at 360-978-5200.



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