



## The Law of Self Defense

### An Interview with Andrew Branca, Part II

Interview by Gila Hayes

At the 2015 NRA Annual Meeting, we were fortunate to spend several hours with attorney and author Andrew Branca (shown to the right, lecturing at the 2015 RangeMaster Tactical Conference), while he was in the Network's booth in the exhibit hall. We shared many of his thoughts and explanations about the law of self defense in the May edition of this online journal, but owing to the length of our conversation with him, broke the interview into two segments, the second of which we continue this month.

In the May edition, Branca defined uniformity and variations in self-defense laws from one state to another, and in the course of that discussion explained how statutory law (sometimes called blackletter law) is put into application on real situations by court decisions, which then becomes case law. He cited another influence that is less accessible to ordinary citizens than statutory or case law and that is the instructions that a judge gives a jury before their deliberations. We return now to our Q & A format to continue learning from Andrew Branca, starting with the subject of jury instructions.

**eJournal:** In our interview last month, you mentioned jury instructions that are not readily available and not well understood, unlike the statutory law you talked about earlier, which we may not always understand correctly but can easily access. Who develops jury instructions and what influence do they have on the outcome of a jury trial?

**Branca:** Most states these days have standardized jury instructions. Usually the highest court in the state has put together a commission of judges and lawyers and they spend years developing standardized jury instructions that are the starting point for jury instructions in every criminal court in that state.

**eJournal:** Only the starting point?

**Branca:** In any criminal trial, both the prosecution and the defense can say, "Your honor, the standard jury instruction doesn't quite fit the facts of this case. The jury will find it confusing. Can we tweak it to take account of this variable or that variable?" The prosecution is trying to tweak it to make it more likely to get a conviction and the defense is trying to tweak it to make it more likely to get an acquittal. The judge has to decide what seems reasonable under the circumstances.

Judges in states that have standard jury instructions really do not like to tweak them unless there is a very good reason because it tends to get reversed when appealed to a higher court. Remember, the standard jury instructions were written by that higher court. That highest court thinks, of course, that they know best and they don't like trial judges messing with it. But sometimes you have to change it because of the facts of the case.

There are other states that literally have no standardized jury instructions. RI is one. You cannot find standard jury instructions in RI because they don't exist. They have standard jury instructions for civil cases, but not one for criminal cases. That means that when you go into criminal court in a RI court, they do what used to be common in all courts. At the end of the trial, the parties propose jury instructions. They draft their own and they propose them to the judge and they have to come to an agreement what will end up in the jury's hands, but there's no standardized starting point. It is not tweaking them; it is writing them de novo, based only on case law.

**eJournal:** Is this good or bad?

*Continued...*

June 2015



**Branca:** I'd rather have people who really had an aptitude for writing jury instructions rather than just whatever criminal prosecutor happened to be in court that day—whether they were having a good day or a bad day—doing it in a very compressed time frame. Standard jury instructions are written over a period of years. In a criminal trial you have a few hours or maybe a day to come up with jury instructions for your case so it is not as thought-out and researched. You can't do things like investigating how do other states do it. You do not have the time.

Standard jury instructions have great strength, but there's a modest weakness that I feel obliged to point out. I mentioned [in last month's interview] how hazardous statutes can be because you don't have the courts' interpretation; you don't know how the courts are actually applying that statute. Jury instructions are in effect an amalgamation of the statutory language and how the courts have applied it in the past. They take the case law, combine it with the statutory language, and they compress it all into the jury instructions.

When you read the jury instructions, the language is not usually the statutory language word for word, but is the statutory language and whatever the courts have added over the course of history when applying that statute. It provides you with a much more accurate sense of how that statutory language will actually be applied in the courtroom and in that sense they're great.

The weakness in jury instructions that people need to keep in mind is that the jury instructions are not in themselves law. They are just an "image" of the law. The statutes are law; the court decisions are law; the jury instructions themselves are not law. So whenever you come across a jury instruction that's contrary to a statute or case law decision, you need to be very careful, because if it is wrong, it won't apply.

It could be wrong because either the statutory language has changed but the jury instruction has not been updated since the new statute was adopted, or a new court decision has happened and the jury instructions have not been updated to reflect that new court decision. What you need is a really competent defense attorney who knows the law in his area and knows whether or not that has happened. Unfortunately, attorneys do not always know.

**eJournal:** How can the citizen evaluate the skill of their hometown's hotshot criminal defense attorney for defense of legitimate use of force in self defense?

**Branca:** It's really difficult. There's a huge variance in the quality and capabilities of criminal defense attorneys. Like any other trade, some are great attorneys and some aren't. You need to be able to make an assessment yourself, make a judgment yourself, on how comfortable you are with that attorney, about his skill set, about his knowledge of the area. It is a very subjective call. There is no report card you can look at for an attorney.

People need to keep in mind that it's not as if you get arrested and you call a lawyer and you're stuck with that lawyer for the rest of your case. The first lawyer you get is almost unimportant. Any lawyer can go to your arraignment and get you bailed out or at least request bail and handle that part of it.

Once you are out of jail, then you can spend much more time talking with lawyers, calling them up, meeting with them. Most of the time you can meet with attorneys free the first time. I'd suggest that you ought to know the law of self defense in your jurisdiction to the greatest extent possible, including, for example, buying *The Law of Self Defense* so you can have an intelligent discussion with your attorney.

If you are starting as a blank slate, any criminal defense attorney is going to sound like a genius. But if you know what the statute numbers are, what the jury instruction numbers are, what the relevant court decisions are, you can ask him, "Well, how does this court decision apply to my situation?" If he can't answer in substantive detail, maybe he does not know as much about self-defense law in that jurisdiction as you'd like him to know. You don't want him to be learning on your dime.

But if you know the relevant questions, then you can get a good sense if this guy seems to know what he is talking about, if you like how he presents, if this is the guy you want standing up in court to represent you. But you need to be informed in order to do that. That is the only way I know of.

**eJournal:** You mentioned the different skill levels your lawyer needs at your arraignment compared to post-arraignment representation. What's the timeline?

**Branca:** You do want, within a day or two, a very competent criminal defense attorney on the case. This is really important. This is where the Network comes in, by the way, with the money.

*Continued...*

You need an attorney and his investigators out looking at the evidence and getting witness statements as close to time zero as you can get. People's recollections do change. They change because they come under political influence or they come under social influence or they just remember things differently over time.

Sometimes those stories change in ways that are very harmful to your claim of self defense. If the only statement you have is the later, harmful statement, there is little basis on which you can attack it. But if you have a statement from the witness the day after it happened that is contrary to their later statement, then you can attack the credibility of that later harmful statement and say, "Wait, wait, wait! The day after, you told us a completely different story." It discredits that later statement. But to do that you need that earlier statement, so you can hold them to account. That means you need the attorney's investigator out there.

**eJournal:** At what point does an expert like you join the team to provide specific guidance about the law of self defense?

**Branca:** My interaction tends to be shortly after indictment, well before the trial. I am hardly ever in courtrooms at all anymore. Here's what happens: the defendant is hoping he is not going to get indicted, but then he gets indicted, and now we know that this is going to be a big deal.

Before you're indicted, there is always the possibility that your lawyer may convince the prosecutor to dump the case completely. Once you are indicted, that prosecutor is all in. That's why he put you in front of a grand jury and got the indictment. He's decided he is going to push ahead. You are going to trial if he has anything to say about it. He has made the decision; he is making the political investment of resources to put you on trial.

That is when the defendant gets really scared. He knows now that he is going to trial. At that point, typically, either the defendant or the attorney will go online and start researching for self-defense law and my name pops up and then they call me.

Typically, the attorney tells me the narrative about self defense and I'll explain where I see the strengths and weaknesses, where I expect the prosecutors will attack, how they can build up their defenses against that attack, lines of argument they can make—especially around more subjective areas like reasonableness—to flesh out and strengthen the narrative that they are going to bring

to counter the prosecutor's attack. Once I help them with their narrative, then the case is really back in the hands of the lead counsel in that case and my involvement goes away unless they have more questions.

**eJournal:** If, as we discussed earlier, that local attorney hasn't defended that many legitimate self-defense cases, your input and guidance sounds like a life-saver, with you going in and pointing them toward the key points from statute, case law and jury instructions applying to their state...

**Branca:** Also from other states, I can say, "These are cases from other states that have a similar self-defense law framework to yours." There may be another state that has a very similar framework of laws where there've been cases and self-defense narratives that an attorney won't discover looking at his own state's trials, but that would be just as effective in his state, because the legal framework is so similar. You can always do a motion to include any law you want from any state, but its not controlling in that court.

I'm trying to help the lawyers develop a compelling narrative of innocence that falls within the bounds of the law in their jurisdiction. For instance, say the case is in WY, I can say, "This sounds to me a lot like a case in AL where the legal framework is similar. Here is the narrative they used—maybe some of it may be effective here."

**eJournal:** That level of complexity reminds me of the recommendation that ordinary citizens are likely to draw incorrect conclusions so we're advised to just put our worries in the hands of the attorneys. A different school of thought encourages us to learn as much as possible to recognize if the attorney is knowledgeable in this area of law. What do you think?

**Branca:** I think it is incumbent on anyone who thinks they may ever use force in self defense to understand those aspects of the law that impact tactical decision-making: how they will physically defend themselves. That is the area that is within your control.

At my seminars, I tell people by the time you leave this seminar five hours from now, you will know far more about the law of self defense than almost any attorney you will ever run into. But that does not make you a criminal defense attorney! There are huge areas of the law that make or break defense cases that have

*Continued...*

June 2015

NOTHING to do with the law of self defense: the rules of criminal procedure, the rules of evidence. We don't talk about that stuff at all in my seminars; those things don't affect your tactical execution.

Those are areas that unless you wish to be an attorney or it's an area of personal interest, a person who carries a gun really doesn't need to worry about. That stuff you can leave to your lawyer. What are left are the laws that govern the actual use of force against another person, and for that we *do* have to take responsibility. Fortunately, it's not that much.

The basics that you need to understand to keep yourself well away from the cliff-edge of self-defense law are not that hard to grasp. Just like there are four rules of gun safety, there's really just five elements of the law of self defense: innocence, imminence, proportionality, reasonableness and avoidance. From my perspective, there is quite a bit of variance because I cover all 50 states, but if you are in an individual state or a couple of border states where you need to know two or three, there's not that much variance, because as we mentioned earlier, these things tend to fall into a limited number of options.

For example, in your state, you have the element of avoidance. It has a certain flavor in this state and it has a different flavor in that state, but you don't need to know the eight different flavors, you only need to know the two that are relevant to you.

One of those flavors will be the more conservative or restrictive. If you're in a jurisdiction where you don't know the flavor, always assume that it is the worst flavor for you and guide your conduct on that basis. That's how you stay furthest away from the cliff edge.

For example, on the issue of avoidance, if you always retreat before you use any degree of force, deadly or non-deadly, you're safe even in MA and you're also safe in every other state on that issue. Do that for every other element and that provides the greatest degree of security. What we don't want people to do is to say, "Oh, I'm in FL and it's a stand your ground state, so now I can stand my ground." If you don't have to fight, you don't want to fight.

**eJournal:** Avoidance should always be the bottom line. Still, when it is time to defend ourselves, we cannot hesitate and that is where it is so important to know what is allowed and what is not. We do need to be

knowledgeable about the self-defense laws where we are. You've helped a lot of people develop that knowledge, so please remind us where we can learn more about your work.

**Branca:** I have a lot of videos on You Tube. The only video people pay for on my website, [www.lawofselfdefense.com](http://www.lawofselfdefense.com) is when we take one of our live seminars and we convert it into an online training course. For TX, for example, I think there are twelve different class segments anywhere from ten to thirty minutes in length: one for each of the five elements of the law of self defense, followed by how to talk to the police, defense of others, defense of property, building a legally-sound self-defense strategy, and so on.

We update the online training regularly to make sure it is current. We thought about doing DVDs early on, but DVDs are like a book, frozen in time and it cannot be updated so the information may not be correct in three or four years. Specific cases or statues can change. I decided to do it on line, so when something changes, we re-record that chapter and the information is up to date. We do that all the time.

On our website we have all of the jury instructions, all the statutes and all the relevant court decisions are in there full-length. They are not actually copyrighted, because they are public domain material, so we collect them and make them readily accessible. (See <http://lawofselfdefense.com/free-legal-resources/>)

**eJournal:** I'd also remind members that Andrew has extended a discount for his online training to Network members. You can access the discounts and coupon codes when you log in to the Network website, [armedcitizensnetwork.org](http://armedcitizensnetwork.org), and click the Discounts/Coupons link in the menu on the right side of that web page. I'd add, Andrew, that I'm looking forward to seeing growth in the numbers of states for which you have online training available, so we'll be checking in at <http://lawofselfdefense.com> regularly to continue learning from you.

Thank you for sharing your knowledge with us through these interviews, and for all the good work you do helping armed citizens understand their state's law of self defense.

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



## President's Message

by *Marty Hayes, J.D.*

In my column last month I asked members if the Network should offer a bail assistance program of some type. The question came about because we reached a goal of \$500,000 in the Legal Defense Fund, so

in my May column, I asked members if helping pay bail was a reasonable use of the Legal Defense Fund or if the Fund should be reserved exclusively for legal defense and thus allowed to grow larger and larger with new and renewing membership. I appreciate the time 62 Network members took to respond to my question. Many people just voted yes or no, while many others took the time to write out their thoughts.

The result of my non-scientific poll is that a majority of the members would like the Legal Defense Fund used to create a bail assistance program in one form or another. In fact, 88% of the responding members wanted the addition of bail assistance, with only 12% stating a clear preference to simply keep growing the fund. So, with this in mind, I will be looking at all the options available through which the Network could help with bail, and Vincent, Gila and I will start putting together a plan to add bail assistance. Let me explain the issues and why I am not sure at this time what would be the best form of that assistance.

Should the Network post a cash bond for the member, or should we pay bail money to a bondsman to get the member released? A bail assistance feature could be implemented either way, but both entail different downsides. If the Network posts a cash bond for the member, then we pay all the money the judge requires as bail, and when the member goes to trial, the Network gets all the money back. If we did this, we would not have to pay a bondsman's fees nor should there be any other costs involved, but we risk the money if a member doesn't show up for court. If the bond was set at \$1 million, we would not be able to pay the entire cash bond, so that is a problem, too.

If we pay a bondsman to pay the bail, there is no danger that the Network will lose the money, but we will pay a

10% fee to the bondsman for risking his money. That is typically the way things work in the real world, but being an individual who likes to think outside the box, I will be looking at non-traditional ways to work with bail agents. I am very guarded about risking ANY of the \$500,000 currently in the Legal Defense Fund on bail, so any assistance would be drawn out of the Fund allocation from future dues, not monies already in the Legal Defense Fund.

I also want the size of the Legal Defense Fund to keep increasing. At this time, I do not think we should divert any of the dues money earmarked for the Legal Defense Fund into a bail fund; the 25% of all dues that comprise the Fund will be banked in the Fund, as they always have been. We will continue to grow the Legal Defense Fund.

I do not expect there would be many requests for bail assistance, as we have had only one request in eight years and eleven cases, but one never knows. Until we develop a formal policy, we will NOT announce or advertise any bail assistance member benefit as an inducement to join the Network.

I have heard your voices. I want to help members needing bail assistance if I can. I think the membership can expect to see a formal policy in place by the end of the year. Again, thank you for your thoughts on this subject; it is great to see feedback from the membership.

### Why I Dislike "Insurance Schemes" The Martin Zale Case

Recently, I came across a court case where the defendant was being tried for murder after what he claimed was a self-defense incident. You can find out about the case by Googling "Martin Zale Trial." I found the case a very good representation of one of those "grey area" self-defense cases, much like the George Zimmerman case.

Unfortunately for Mr. Zale, I don't believe he had the resources to mount a full legal defense, despite being a subscriber to one of the popular "self-defense insurance schemes." As I believe the facts to be, he was a

*Continued...*

June 2015

member of an organization that offers self-defense insurance as a reimbursable benefit, but does not supply money to fight the court battle.

In my looking at the case from afar, it appears that he could have used a defense expert to explain the disparity of force issue, along with forensic experts and perhaps a pathologist who could have nailed down the distance the deceased was from Mr. Zale. And, the fact that he had set up a Legal Defense Fund and was asking for donations at the website <http://www.martinzaledefensefund.com/home.html> indicates that my supposition is likely correct.

Frankly, this case sickens me, as these insurance schemes sell on the fear of going to prison, and most people do not read the fine print of the policy until it is too late.

This month's column will be, by necessity, a short one, as I am working on several other projects and a new self-defense case, to which I must get back.

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

*June 2015*



## Attorney Question of the Month

Network Affiliated Attorney Steven Harris, while watching *Henderson v. United States*, which he discusses at length in his column at *Modern Service Weapons* with the Court decision detailed in a later MSW column, asked our Network Affiliated Attorneys the following question:

*What are your recommendations or protocols for a person who may be or is charged with a crime in a situation alleged to be justified use of force in preparation for the possibility that either to be granted bail pending trial, or in the event of conviction, he/she will no longer be permitted to "possess" firearms under state and/or federal law?*

### **C. Dennis Brislawn, Jr., J.D.**

Oseran Hahn, P.S.—Private Client Law Group  
1430 Skyline Tower, 10900 NE 4th, Bellevue, WA 98004  
425-455-3900 x105

<http://www.theprivateclientlawgroup.com>  
[dbrislawn@ohswlaw.com](mailto:dbrislawn@ohswlaw.com)

Under the facts presented, where justifiable use of force is involved whether charges have been brought or not, an estate planning solution appears to be attractive. Best of all it will provide protective benefits for any gun owner's collection and will help preserve firearms rights whether a criminal issue ever arises or not.

Preserving personal firearms and ammunition is first and foremost an estate issue at all times, and a criminal one perhaps rarely. A gun owner concerned with preservation of firearms should at least consider creation of a revocable or even an irrevocable gun trust as part of his or her estate plan. Given that firearms are important to many of us and most of us want to control what might happen to them if something happens to us, planning is important. If no planning was done but a self-defense issue arises, a person could still consider creation of a gun trust to help protect firearms possession at that time. In this context this should be done well in advance of case disposition in order to have the most options. And, if done properly, an estate planning approach can be seen in a proactive and positive light even during pendency of a criminal case.

A gun trust is a purpose-built living trust designed expressly for lawful possession and enjoyment of

firearms and accessories. Since design is quite flexible, provisions can and are commonly included that specify what occurs should a trust grantor (client) suffer a legal disability such as a criminal conviction.

Proper design addresses who can possess, who can enjoy, and who takes over if the client cannot legally possess for any reason, due to criminal incapacity or more commonly legal incapacity due to health, age, illness, etc. Trusts are commonly intended to own assets for the benefit of the client or others, and anticipate appointment of a successor trustee to serve during the client's legal disability. Again, incapacity is commonly due to health reasons but would also include criminal incapacity to possess as a result of criminal conviction, probation, etc.

The key in using a trust solution is to address proper limitation of the trust grantor's or ANY trust beneficiary's right to possess firearms or ammunition to remain consistent with the law, but also to take into account the possible restoration of rights. A quality gun trust can and should spell out how the trust provides benefits to the grantor or other beneficiaries, including the right to possess firearms by others during the client's legal disability versus economic benefit (i.e. sale of firearms, ammo and application of the resulting trust assets and sale proceeds) for client benefit. Since a trustee possesses trust property for the benefit of others, trustee succession is an issue in this fact pattern, too. Note that by using a gun trust, the inability to possess a firearm does not mean that a client cannot receive economic benefits from the trust or that others cannot possess and enjoy firearms even though the client is prohibited from doing so or serving as a trustee.

In a business setting, where the defendant gun owner may be the business owner or employee involving a firearms business, things become more complex. Creating a firewall between possession (actual or constructive) of firearms/ammunition can be problematic and will require careful consideration of the risks involved.

Navigating firearms and ammunition possession where criminal charges have been or will be brought can be a complex issue to solve. Negotiating the solution, i.e.

*Continued...*

June 2015

transferring firearms to a non-prohibited person (spouse, friend) for lawful possession and safekeeping must take into account Washington's passage of I-594, amending RCW 9.41, and the lack of clarity or definitive operational guidance that exists as to entity possession/ownership.

Prior planning or early planning always provides the widest choice of options in preserving a firearms collection for self or others. Dealing with lawful possession, enjoyment and transfer when there are no pending issues is far superior to disaster planning. All of us face the reality of death, possibility of incapacity due to age or illness, and will never face the kinds of criminal charges contemplated here. The good news is that by creating a quality gun trust in advance of need both issues can be dealt with quite handily and for a comparatively modest cost.

**Bruce Finlay**

Attorney at Law

P.O. Box 3, Shelton, WA 98584

360-432-1778

<http://www.brucefinlayattorney.com>

[brucef@hcc.net](mailto:brucef@hcc.net)

Under current Washington state law, I would advise the person to get all of his firearms out of his house into the hands of a very close or trusted relative or friend who can be trusted to give them back when appropriate. This may require a visit to a federally licensed firearms dealer to do the paperwork for transfer under the new Washington law that effectively creates a uniform registration system by requiring the vast majority of firearms transfers to take place at the hands of an FFL.

**James B. Fleming**

Fleming Law Offices, P.A.

PO Box 1569, Monticello, MN 55362

(763) 360-7234

<http://www.jimfleminglaw.com>

[jim@jimfleminglaw.com](mailto:jim@jimfleminglaw.com)

Various states have provisions in their statutes and/or rules of criminal procedure, empowering the trial court to prohibit the possession of firearms in a variety of types of cases, usually involving allegations of crimes against another person, or crimes involving the use of firearms in general.

In Minnesota, for example, 629.715 Release in Cases Involving Crime Against Persons; Surrender of Firearms, provides that the judge may order as a condition of

release that the person surrender to the local law enforcement agency all firearms, destructive devices, or dangerous weapons owned or possessed by the person, and may not live in a residence where others possess firearms.

In Illinois, it is Sec. 110-10. Conditions of bail bond:

(a) If a person is released prior to conviction, either upon payment of bail security or on his or her own recognizance, the conditions of the bail bond shall be that he or she will: (5) At a time and place designated by the court, (a) Surrender all firearms in his or her possession to a law enforcement officer designated by the court to take custody of and impound the firearms and physically surrender his or her Firearm Owner's Identification Card to the clerk of the circuit court when the offense the person has been charged with is a forcible felony, stalking, aggravated stalking, domestic battery, any violation of the Illinois Controlled Substances Act, the Methamphetamine Control and Community Protection Act, or the Cannabis Control Act that is classified as a Class 2 or greater felony, or any felony violation of Article 24 of the Criminal Code of 1961 or the Criminal Code of 2012.

In Texas it is found in various sub-divisions of Chapter 17 of the Texas Code of Criminal Procedure. There are many other examples but going over all 50 of them would be boring.

Challenges to these provisions on Constitutional grounds uniformly fail. SCOTUS has provided in the *Heller* and *McDonald* decisions that the right to keep and bear arms is subject to reasonable regulation. This is considered reasonable regulation for the sake of public safety. "But I am innocent until proven guilty!!" falls on deaf ears since conditions of release have nothing to do with guilt or innocence, and everything to do with public safety.

My suggestion would be, have a plan, including identification of someone who does not live with you, and who legally can, and is willing, to take custody of all your firearms in advance of your first appearance/bail hearing. Have them do so immediately after the incident, placing the firearms in locked storage. Some prosecutors are going to argue that this does not comport with the letter of the law. Counsel can argue that the intent of the law is to remove the firearms from your possession, custody and control, and that by having them in the hands of a competent third party adult, under lock, the intent is met.

*Continued...*

June 2015

**Joel A. Brodsky**

Law Office of Joel A. Brodsky  
8 S. Michigan Ave., Ste. 3200, Chicago, IL 60603  
312-541-7000  
<http://www.joelbrodskylaw.com>  
[joelbrodsky@sbcglobal.net](mailto:joelbrodsky@sbcglobal.net)

First, as in any case where you may be, or are charged with a criminal offense, do not say anything at all to anyone until you have talked to your lawyer. (Of course there are situations where you may have to call 911 to state "there has been a shooting please respond to ---", or tell the police where the firearm is so they can secure it, but if at all possible say nothing until you have spoken to an attorney).

Then, your attorney will want to immediately start looking for and making requests for, what we in Illinois we call "Lynch evidence" (named after the case of *People v Lynch*), which is evidence of the violent, aggressive, or criminal character of the person who was shot. While normally a defendant is prohibited from seeking character evidence regarding a "victim," in self-defense cases, this type of evidence is both highly relevant and admissible. The more evidence you have regarding the violent, aggressive or criminal background of the person who was shot in self defense, the better chance you have of a low bond and an eventual acquittal.

**Benjamin M. Blatt**

Attorney at Law  
P.O. Box 221, South Bend, IN 46624-0221  
574-360-4039  
<https://www.facebook.com/hoosierattorney>  
[bblatt11@aol.com](mailto:bblatt11@aol.com)

This question is why I strongly recommend that clients use a firearm trust, not just for NFA items but for all of their firearms. If a client is, by the conditions of their bail pending trial, unable to lawfully possess firearms, another appointed trustee can take them (since they are the trust's and not the client's) and hold them pending the case's outcome, without causing concern for the client (assuming that the client selected a trustworthy second trustee).

If the outcome is negative, and the client is barred by state or federal law from possessing firearms, a trust can operate in one of two ways. If the conviction may be eventually expunged and the client's rights to possess firearms fully restored under state and federal law, then the trust can again enable the other trustee to hold and

store the firearms pending that eventuality. If the conviction is not one that may be expunged, or if the client later becomes ineligible due to further offenses, then the trust can operate to smoothly transfer possession and ownership of the firearms to the next trust beneficiary.

If, however, a client does not have a trust, then the options available are much more limited. Without a trust, a client must make a quick and sudden decision as to which family member or friend is trustworthy enough to hold on to the firearms for a short time (due to bail conditions), keep for a lengthy time (if the client wants to buy them back from the new owner after firearm rights have been reinstated), or own forever (if the firearms have special meaning or are heirlooms that the client wants to keep in the family).

**Tim Evans**

29 N. D St., Hamilton, OH 45013  
513-868-8229  
[tim219@zoomtown.com](mailto:tim219@zoomtown.com)

Under Ohio and federal law simply being charged does not prohibit possession of a firearm, there must be an indictment of a felony that prohibits firearm possession. If that happens then the defendant cannot possess a firearm.

**Jon H. Gutmacher, Esq.**

Attorney at Law  
1861 S. Patrick Dr., PO Box 194, Indian Harbour Beach, FL 32937  
407-279-1029  
[www.floridafirearmslaw.com](http://www.floridafirearmslaw.com)  
[info@floridafirearmslaw.com](mailto:info@floridafirearmslaw.com)

You want to be granted bail, rather than rotting in a prison cell. You certainly are not much help to your attorney sitting in jail, and in a worst-case scenario at least you can see to your affairs if prison is a possibility. Likewise, if you are convicted, I seriously doubt that whether you can own a firearm in the future is a real consideration since you're likely going to be sent to prison upon conviction. The ability to own a firearm after that is a given "no," and should be the least of your worries.

---

*A big "Thank you!" to each Network Affiliated Attorney who responded to this question. Please return next month when we pose a new question to our Affiliated Attorneys.*

June 2015

## DVD Review

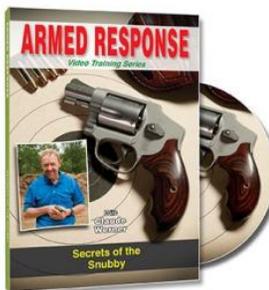
### Secrets of the Snubby

Lecture on DVD by Claude Werner

Produced by Armed Response © 2014

<http://www.armedresponsetraining.com/product-p/artvs018.htm>

1 hour 4 minutes, \$19.95



The snub-nosed revolver is the most popular and best selling handgun in the country and shooting it better is the topic of a concise and instructive one hour lecture by Claude Werner. Werner is The Tactical Professor, blogging at <http://www.Tacticalprofessor.com>. A retired Army Captain with 10 years of service in Special Operations, he has six IDPA Championships with snubby revolvers to his credit. He was formerly the Chief Instructor at the elite Rogers Shooting School in GA. In other words, when Werner discusses improving your shooting skills, it is a good idea to listen.

Long a favorite with those who carry guns for self defense, the short-barreled revolver, fondly called the snubby, is valued for its small dimensions, light weight and ease of concealment, Werner comments by way of introduction. The drawbacks for this popular little gun include a stiff, long trigger pull, small sights, short sight radius and limited ammunition capacity, he accounts.

Werner teaches the viewer how to perform well with the snubby revolver despite these difficulties, or as he puts it, "maximize your ability to use the snubby effectively." Many shooters have trouble manipulating the double action revolver correctly, he begins. The cure starts with proper trigger finger contact with the double action revolver trigger: the crease of the trigger finger centered on the face of the trigger for more leverage to compensate for the heavy trigger pull.

Werner identifies two common double action trigger manipulation methods – that of pulling straight through compared to staging the trigger, a common competitive shooting trick of pulling quickly, nearly all the way to hammer fall, then hesitating and gaining control right at the end of trigger pull. Staging is fine for competition, he explains, but not for defense because there is a "distinct possibility that at the end of the stroke you will have a negligent discharge."

The reason many have difficulty hitting accurately with double action revolvers, Werner analogizes, is that the shooter mashes the trigger like a dragster driver

slamming the pedal all the way to the floor for rapid acceleration. This disturbs sight alignment and pulls the muzzle off target as the shot fires, he explains. Instead, he urges, imagine merging onto a freeway. A skilled driver accelerates smoothly but quickly to merge with traffic. When shooting the double action revolver, press the trigger smoothly and quickly so you do not disturb the sights, he compares.

While honing the skill of double action trigger control, start with slower presses of the trigger, then as you can keep the sights aligned, pick up speed as proficiency increases. "This may take you hours of practice to learn to do this quickly without disturbing the sights, Werner observes. Revolver shooters have the best gun in the world for dry fire, so he naturally discusses this training technique for learning trigger control.

While much of Werner's focus is on the shooter's skills, he recommends moderate changes to the gun. Polish the trigger to radius the sharp edges, he suggests. The rounded edge allows the finger to slide across the trigger, accommodating the pull through technique.

He also demonstrates highlighting the common blade and groove sights milled into many snubby revolvers, using two colors of enamel or nail polish on specific areas of the front sight blade and a fine-point black indelible marker on the rear sight's notch. If your revolver has a pinned or removable front sight, you might upgrade to a night sight with a tritium insert or an XS Sights Big Dot for an even more prominent front sight, he adds. If you replace the sights, check your revolver's point of impact and make sure you know exactly where your bullets are going to go with the new sight combination, he stresses.

Even with these enhancements to the sights, the snubby's short sight radius makes aiming harder than it is with larger guns. To assist with accurate aiming, Werner explains the relationship between accurate snubby shooting, body index and understanding and using the dominant eye. Peripheral vision can pick up the sights as the presentation brings them into lower limits of vision, he notes. As the sights come into view, switch focus from the threat to the snubby's front sight, thus using the eye/target line to quickly align the sights

*Continued...*

June 2015

even while extending toward the target, he teaches. This segment combines excellent verbal instruction with good camera work in a well-presented lesson.

This principle is revisited when Werner teaches drawing the snub-nosed revolver to a high pectoral position beneath the dominant eye so the gun can be driven straight to the target to benefit from the eye/target line technique. The single most common mistake people make drawing from a holster is to get the gun out and then make a scooping motion before bringing it up on target, he opines. When this presentation error occurs, the shooter is unable to see the sights until the gun is on target in a fully extended shooting stance, slowing the first shot. A bit later he demonstrates aiming with the entire silhouette of the gun, explaining how proximity to the target dictates whether this method is sufficiently accurate for the distance at which you are working.

A common aftermarket modification to snubby revolvers is changing out the grips to better fit the size of the shooter's hand. Werner weighs pros and cons for replacement stocks discussing materials and grip length. He is more concerned with the depth of the grip panel from the back strap as it affects the placement of the trigger finger on the face of the trigger. If stock depth is too great, you will have to over-reach to contact the trigger, moving the back strap out of the web of your hand and sacrificing alignment with the bones of your arm, he explains.

Werner later revisits grip, demonstrating how a properly fitting revolver lines up with the bones of the arm for a one-handed grip. He demonstrates common grip variations, without expressing any particular fondness for one over another, but warning that if gripping with thumbs forward, the thumb must stay away from the cylinder gap and not drag on the cylinder, either. Regardless of the thumb position, you should be squeezing the grips firmly with the firing hand, he concludes.

Use of pocket holsters is covered as Werner explains how to draw from trousers with large slash pockets as well as smaller pockets as is common on most denim jeans, where the thumb can snag on the top of the pocket and trap it. In addition, he demonstrates several methods for drawing from an ankle holster. He explains

use of bellybands and adds that bellybands work well where you can't conceal a conventionally holstered gun or if you wear clothing without belts.

Improving marksmanship with the snubby starts with an analysis of targets. Werner prefers simple circles with center dots and uses an old CD for a template. Skill builder drills start with dry fire at ten feet on the CD-outline target, followed by ball and dummy drills interspersing an empty case amongst live ammunition to analyze how smoothly the shooter rolls the trigger. "What we're looking for on that exercise is to make sure that our sights aren't moving when we press the trigger. Especially when we come up on the dummy round, we want to see the sights vibrate, but not jerk down because we are pressing the trigger improperly," he details. The same ball and dummy exercise is added to drawing from the holster.

At the end of his training drills chapter, Werner illustrates setting up scenarios he has read about in the news or the Armed Citizen column in the NRA publications. He explains that he likes to start by setting up a scenario as close to the situation reported, shoot that scenario, and then try it with alternative tactics to see what could be done better. The program ends with a second set of range drills presented by Wayne Spees and showing different reload methods, shooting stances, and a few other modifications. His demonstrations of reloads and use of the non-dominant hand are probably the most valuable of this addition to the program.

Armed Response's *Secrets of the Snubby* is a useful training video that comprehensively covers the principles of snub-nosed revolver shooting, how to improve your revolver shooting skills, and how to maintain and increase accuracy with this common type of handgun. Whether you regularly carry a snubby, if you prefer a slightly larger revolver, or if you only occasionally shoot a revolver, Werner offers valuable skill builders and techniques in his concise but thorough lecture on DVD. The program is formatted with good chapter-end notes that tie down the facts presented in each chapter.

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

June 2015



## News from Our Affiliates

*Compiled by Gila Hayes*

May was a busy month at the Network, with thousands of copies of our educational foundation's complimentary booklet *What Every Gun Owner Needs to Know About Self-Defense Law* sent out to Network Affiliated Instructors. Some recipients were familiar: instructors with whom we have been working for years while others were brand new friends of the Network.

We are happy to welcome new Network affiliated instructors who've recently joined the Network as members themselves then can't wait to tell their students how the Network can provide essential support after a self-defense incident. Our booklet is an integral part of these instructors' effort to educate firearms students about aftermath issues.

A good example comes from new Affiliated Instructor Jeffrey Bernard of Decisive Action Concepts, Ft. Leavenworth, KS, who recently affiliated with the Network. He writes, "I am an active duty Army officer, and I predominantly teach soldiers and members of the public. I've integrated your material into my courses to reinforce state statute and convey a concealed carrier's legal obligations." He teaches KS and MO concealed carry classes as well as tactical carbine instruction. For more information, contact him by phone at 913-730-0483 or email [jbernard@decisiveactionconcepts.com](mailto:jbernard@decisiveactionconcepts.com).

Jeremy Beres and his instructional crew at Iron Sight, LLC in Western New York State recently joined the Network. They have a variety of classes including both New York State CCW classes and classes for the Utah, Arizona and Florida permits, so valued by concealed carry practitioners for their broad reciprocity. In addition, the folks at Iron Sight Firearms Training teach several skill levels of pistol, shotgun and rifle courses, as well as weapons disarming and retention and defensive knife classes. Learn more at [ironsightllc.com](http://ironsightllc.com).

I got a nice note from another new affiliated instructor in Torrance, CA, Michael Flick who with his wife Yvonne operates Crosshairs Tactical, a retail store, range operation and firearms training business described at <http://crosshairsusa.net>.

Recently, Mike inquired, "I have been issuing your *What Every Gun Owner Needs to Know About Self-Defense Law* to each of our graduating students. I would also like to place the booklet in their shopping bag as part of our sales transaction if you think that would be appropriate and you have adequate supplies to support the effort. I really like the approach you took with the booklet and feel very strongly that our customers need to know what they will face if they have to use lethal force in self defense."

Well, naturally, we sent more booklets and thanked Mike for sharing them with the retail customers as well as his students. Members, if you're in the Torrance area, Crosshairs Tactical has a full range of accessories including optics, non-lethal, apparel, hearing protection and more in addition to gun and ammunition sales. Their training classes include introductory firearms safety as well as concealed carry licensing training certification. Learn more about their training programs at <http://crosshairsusa.net/crosshairs-institute/>.

Network members, please support these affiliates and others linked at <http://armedcitizensnetwork.org/affiliates> because they help the Network grow by giving clients a copy of a Network brochure or our *What Every Gun Owner Needs to Know About Self Defense Law* while explaining the value of Network membership for armed citizens.

Affiliates, please notify me about programs, classes, open houses and other events you have scheduled in late July and August so we can encourage members to attend. In addition, if you are getting toward the bottom of your box of our booklets or brochures, email me at [ghayes@armedcitizensnetwork.org](mailto:ghayes@armedcitizensnetwork.org) or call 360-978-5200 so we can support your efforts to tell your clients about the values of Network membership.

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

June 2015



## Editor's Notebook

by Gila Hayes

**bur·gla·ry** 'bərglərē/, noun  
Entry into a building illegally with intent to commit a crime, especially theft.

**rob·ber·y** 'rəb(ə)rē/, noun  
The taking of money or goods in the possession of

another, from his or her person or immediate presence, by force or intimidation.

Two simple dictionary definitions for massively different crimes, different targets and different responses if you use force to prevent the completion of the crimes identified above. Burglary? A property crime. Robbery? A violent crime against a human being. Allowable defenses against either—massively different.

Why, then, is it so common to hear, “Can I use my gun to stop someone from robbing my car?” or “If I see some people robbing the neighbor’s house, can I shoot them?” You’d be surprised how often people make that vocabulary mistake. The neighbor’s house or your car are not living things. Neither can be robbed.

Why does this matter? It matters because sloppy vocabulary clouds key concepts including when the armed citizen can use deadly force to prevent the commission of a felony. It matters because the very citizens who may sit on a jury to judge your use of force in self defense are inundated by these elementary vocabulary mistakes when they listen to the nightly news or read the daily paper. It matters because the standard of reasonableness to which your use of force will be judged is not likely to smile on shooting burglars carrying off your neighbor’s priceless coin collection, nor give the green light to shooting car prowlers from your balcony, a mistake for which a King County (WA) Superior Court found a young man guilty of second-degree manslaughter in 2008.

An awful lot of the newsworthy cases to recently paint armed citizens as dangerous and unstable started with the introduction of a gun into the interdiction of a property crime. Reporters—and as a result, the general public—nearly always fail to recognize when what started as a property crime turns into assault when a burglar rushes at or menaces a citizen who decides to prevent the theft. When that happens, the crime is no longer a

burglary attempt it becomes assault and the trier of fact has to figure out if the shooter and his/her assailant both contributed to the conflict. Has the armed citizen left a place of safety to pursue the burglar?

Don’t count on the courtesy extended to the son of AR State Rep. John Payton when in April he shot a burglar who was running away from the family home, breaking down the gate and hopping fences. You may, instead, suffer the same fate as the armed citizen in Portland, IN who, despite testifying that he feared for his life, went to jail convicted of criminal recklessness resulting in serious bodily injury after shooting a fleeing intruder outside his garage. His defense attorney didn’t help much when she was quoted as saying, “People are tired of having their stuff taken.”

The Network exists to mitigate the legal aftermath for members who have to use force to avoid death or serious physical injury. While the threat of either could well be part of an assault suffered after a criminal breaks in, using deadly force in defense of human life needs to be articulated early, often and clearly as necessitated by the violent assault of the criminal, not because we got tired of the crime wave hitting the neighborhood.

Is it reasonable to go out to the garage to see who is in it? Is it reasonable to go over to the neighbor’s house to see who went in and left a car idling at the curb? If you make either choice, only you can explain why that was reasonable. Be prepared in advance and before intervening in what may be a crime in progress, think about how you will explain your actions.

### Affiliated Attorneys in the News

Usually, when one of us makes news headlines it is not a good day. That was not the situation in two news reports that I happened across last month, both involving Network Affiliated Attorneys.

Attorney David J. Strachman, partner at the law firm McIntyre Tate, successfully represented a concealed weapon permit applicant who was denied by the City of East Providence in *Gadomski v. Tavares/City of East Providence*, according to the firm’s website. The Rhode Island Supreme Court quashed the decision denial of Gadomski’s application and directed the city to a new decision within 90 days.

*Continued...*

June 2015

The Court indicated that Rhode Island's constitution and municipal licensing statute entitles applicants to procedural due process and accordingly "it is imperative that the local authority acts as a 'finder of fact, not a master of puppets.'" The Court also took the unusual step of retaining supervision of the case after remand, the firm writes at <http://www.mtlhlaw.com/Firm-News.shtml>.

Strachman has litigated similar constitutional civil rights cases, which frequently are supported by civil rights organizations such as the ACLU. A link to the full text of this decision, *Norman T. Gadomski, Jr. v. Joseph H. Tavares, Chief of Police for the City of East Providence, Rhode Island Supreme Court No. SU-14-0072* is provided on the law firm's website.

Another Network Affiliated Attorney, this one from Michigan, was also in the news late last month: "A statewide gun-rights group and a father with children in the Ann Arbor schools are suing the school district over its new policies that ban firearms on school grounds.

"The lawsuit, filed in Washtenaw County Circuit Court, comes just as a crowd of about 500 gun-rights advocates are expected Wednesday at the annual Second Amendment March around the Capitol Building in Lansing. After hearing speakers, the crowd of pistol packers customarily stride into the chambers of state lawmakers, prominently bearing their arm" *[sic]* the online news report stated.

"We like to remind the legislators who we are and what our rights are," said Jim Makowski, a Dearborn lawyer who filed the lawsuit and said he personally served it Monday afternoon at the offices of Ann Arbor Public Schools. Makowski planned to march Wednesday in Lansing and is scheduled to speak from the Capitol steps." See the whole story at <http://www.gopusa.com/news/2015/04/30/lawsuit-challenges-ann-arbor-schools-gun-ban/?subscriber=1> from which these quotes are drawn.

*[End of June 2015 eJournal.  
Please return for our July 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](mailto:editor@armedcitizensnetwork.org).

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

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



June 2015