

Network Introduces Continuing Legal Education

Representing innocent men and women who face criminal charges or civil suit for damages after defending themselves against criminal attack is a rare occurrence for attorneys who more commonly are asked to defend criminal behavior. Knowing this, legal education programs generally give short shrift to justifiable use of force in self defense, knowing that their graduates' work will be more heavily weighted toward defense of those who have committed a crime.

Advances in legislation allowing concealed carry combined with increases in the numbers of gun owners (details at www.nssf.org/bulletpoints/links/010312.cfm), give reason to predict that incidences of legitimate self defense must surely increase in the months and years ahead. Those in the legal profession can expect more and more opportunities to defend legitimate and justifiable self-defense acts, and this means a new and growing need to understand the legal justifications for using force in defense, the dynamics of violent attacks and defenses against the same, along with a host of related concerns.

Who better to fill a need for continuing legal education (CLE) on these topics than the experts at the Armed Citizens' Legal Defense Network, Inc.? Two years ago, Network President Marty Hayes and Advisory Board members Massad Ayoob and James Fleming began developing an in-depth use of deadly force curriculum for attorneys. The result is a two-day legal education seminar, four of which have been scheduled across the nation in 2012. The first offering of Understanding Use of Deadly Force in Self-Defense is scheduled for June 19-20, 2012 in the Minneapolis, MN suburb of Eden Prairie.



Although the program is designed to provide useful and meaningful continuing legal education for attorneys and professionals who work in the criminal justice system, the seminars will also be open to firearms instructors, professional

investigators, members of the Armed Citizens' Legal Defense Network, Inc. and others who desire a deeper understanding of issues bearing on the legal defense of individuals who have had to use force to prevent or stop criminal assault.

Among topics in the two-day program's curriculum are understanding the issues in self-defense cases with an overview of the classic self-defense case, understanding firearms, ammunition and ballistics as they relate to deadly force cases, crime scene reconstruction issues, deadly force defense with knives and other weapons, use of force considerations in non-deadly force self-defense cases, the law of self defense and justifiable homicide, decision making in self-defense cases, understanding the AOJ Standard (ability, opportunity, jeopardy) and its applications, understanding the physiological and psychological aspects of violent encounters, distortion of witness perception of events, understanding witness dynamics in deadly force, and witness issues for the prosecution and defense.



Seminar participants will also learn about case management and trial strategy, including jury selection issues, preparing for objections to voir dire/permissible scope of voir dire, juror characteristics, themes - what is self defense and when does it apply,

understanding the self-defense defense, the care and feeding of experts, impeachment of opposing experts, ethical considerations in deadly force cases, importance of demonstrative evidence, preparing the client to testify and closing arguments.



[Photos-Left: James Fleming, Above: Massad Ayoob, right: Marty Hayes.]

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These topics will be presented by James Fleming, Massad Ayoob and Marty Hayes. Each brings considerable strengths to their role as instructors for these CLE seminars.

Ayoob has published thousands of articles in gun, martial arts and law enforcement magazines and is author of more than a dozen books on firearms and self defense, including *In the Gravest Extreme*, widely considered to be the authoritative text on the topic of the use of lethal force. He has appeared on CLE-TV delivering continuing legal education through the American Law Institute and American Bar Association. Ayoob served for two years as co-vice chair of the Forensic Evidence Committee of the National Association of Criminal Defense Lawyers. He served 19 years as chair of the Firearms Committee of the American Society of Law Enforcement Trainers, and several years as a member of the Advisory Board of the International Law Enforcement Educators and Trainers Association. In addition, he has also taught at International Homicide Investigators seminars. Ayoob has received judicial recognition as an expert witness for the courts in weapons and shooting cases since 1979, and has been a fully sworn and empowered, part-time police officer for 36 years. Ayoob founded the Lethal Force Institute in 1981 and served as its director until 2009, and now teaches through Massad Ayoob Group. He also appears in each episode of Personal Defense TV on the Sportsman's Channel.

Fleming is a practicing MN trial attorney, admitted to practice in the State and Federal Courts of both NE (1984) and MN (1991), as well as the Eighth Circuit Court of Appeals (1993).

He is the owner of Fleming Law Offices, P.A., and is also employed by the MN State Public Defender's Office as a Felony Trial Specialist. Since 1984, he has conducted well over 250 trials, in addition to presenting numerous appeals on both the state and federal levels, including the Eighth Circuit Court of Appeals. He graduated from the University of NE College of Law in 1984 and has served as adjunct legal faculty at UNL-College of

Law, the University of NE-Undergraduate Studies, NE Wesleyan University and the College of St. Mary of Omaha, NE. Fleming is also a former NE certified law enforcement officer, and has served as an Investigator for the NE State Crime Commission. He is also an experienced firearms instructor, certified by the NRA, the States of UT and MN, and President of Mid-Minnesota Self-Defense, Inc., a company providing both basic and advanced firearms self-defense training for private citizens and law enforcement officers.

Hayes is President of the Armed Citizens' Legal Defense Network, Inc. as well as the Director and President of The Firearms Academy of Seattle, Inc. He has extensive experience serving as an expert witness and crime scene reconstructionist in homicide and other violent felony cases, and has provided testimony as a firearms, ballistics and blood spatter expert. He graduated from Eastern Washington University in 1982, with a Bachelor of Arts Degree in Psychology and obtained his Juris Doctor degree from Concord Law School, Kaplan University of CA, in 2007. He is featured weekly on the TV show, *Best Defense on the Outdoor Channel*. He has authored numerous magazine articles on the topic of self-defense, as well as authoring three firearms related books. Recently, his involvement in a high profile murder case in WA State, has been the subject of a true crime non-fiction book, *In the Still of the Night*, by author Ann Rule and published by Free Press, a Division of Simon & Schuster Publishers.

Tuition for this two-day seminar is \$400, with a 10% discount available to public defenders, prosecutors and members of the Network. You can register online at the Network website, but those qualified to receive the discount will need to register by phone, 360-978-5200.

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Threat Assessments for the Armed Citizen

As a follow-up to the interview on threat avoidance given in the January 2012 edition of this journal, I asked noted firearms instructor and Network advisory member Tom Givens for his comments. He kindly spelled out his thoughts on threat assessments for armed citizens in the article below, saving us the unavoidable filter that occurs when an expert answers an interviewer's questions. Givens' comments are succinct and extremely pertinent. Read, learn and apply his points!

Givens is the owner/operator of Rangemaster (see <http://www.rangemaster.com/about/about-us.html>) author of many, many gun magazine articles over the past several decades, as well as author of several books and featured lecturer in a variety of DVDs all addressing firearms and self defense. If you have the chance to train with him, or learn from what he has written, by all means, do so!

by Tom Givens

I often hear the term "threat assessment" thrown around by people in discussions about firearms or training. Unfortunately, this is often used as nothing more than an excuse to not carry adequate equipment or to train less. For many people, there are three fallacies involved in any discussion of threat assessment, so let's examine those issues.

First, you need to recognize that in the field of personal security, your "perceived" threat level and your "actual" threat level may not be the same. For instance, let's say you live in the upscale part of a suburb with a historically low crime rate. You stay home at night, you don't do drugs, and you work in a nice office in a secure building. Your "perceived" threat level is very low. This may well lead you to conclude there is no need to actually carry a gun daily or to devote a couple of weekends to defensive training.

However, on the way to work tomorrow morning, while parking your car, two career criminals decide that they need your car to get out of the area and they are willing to kill you to get it. Your actual threat level on that day is quite high, but you are working on the assumption made in your threat assessment. Or, another scenario—you are in your



secure office building when a co-worker is fired. He believes, correctly or incorrectly, that you are responsible for the loss of his job, his pension, his health care and so forth. He decides to kill you on his way out of the building. As I write this, less than 24 hours ago a federal ICE agent got into a dispute with his supervisor and shot the supervisor several times. The agent was then killed by a third ICE agent in the office. This occurred in a "secure" federal office building. Again, the perceived threat and the actual threat didn't match.

The problem is that a life threatening event which calls for immediate gunfire to save your life or the life of a loved one may be a low probability event, but the negative impact of losing is so high that you cannot afford to be wrong. The odds of your needing your handgun to stay alive might be one in four, or one in four hundred, or one in four thousand, but if you are the one who needs it today, you'll need it very badly!

I have almost sixty private citizen students who have had to use a handgun to save their own life or the life of a loved one. All of them won their fights, and only three were injured. I do, however, know of two students of mine who were killed in street robberies. Both were executed for the contents of their pockets in separate incidents. Neither was armed at the time of their death. Their threat assessments told them that they had no need to be

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armed on those days, they were wrong, and now they are dead.

A related misconception is that "since I have a low probability of needing a gun today, I'll just carry this little gun." I have investigated or studied literally thousands of shootings over the last four decades, including almost sixty cases involving my own students. I can assure you, in a life-threatening crisis you will be zero percent involved or you will be one hundred percent involved. You will never be forty percent involved in a gunfight! Either your life is in grave danger or it is not. If it is, you will be very glad that you bothered to wear a mid-size to full-size pistol and at least one reload for it. If you carry that gear religiously, every day for thirty years and you never have to use it, that's great. If, on the other hand, you fail to carry it just one day and you or a loved one are killed or crippled as a result, that's bad.

The final misconception is that we can eliminate risk. That is simply not possible. "Life is a sexually transmitted disease that is invariably fatal" is my favorite quote from Jeff Cooper. What we can do is manage our risks.

From a personal safety standpoint, we can do this fairly simply by following these guidelines:

Follow Farnam's Dictum: Don't go to stupid places, hang out with stupid people, or do stupid things. Add to that these precautions:

1. Have a security professional look over your home and make the changes he suggests involving better deadbolt locks, window locks, lighting, and alarm system.
2. Learn to pay more attention to your surroundings when in public. Look for anything that is out of place. Watch people you don't know whenever they are nearby. Ask yourself two questions, "Who is around me?" and "What are they doing?"
3. Get some reality based self-defense shooting training. If you want to do a "man camp" five day rifle course, that's fine. They are great fun. Mark that on your vacation budget, though, and set aside the time for training with a daily carry sidearm.
4. Accept the fact that to have control over your life and to properly manage your risks, you need to actually carry your defensive gear, every day. The gun in the safe at home simply won't help you on the grocery store parking lot.

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President's Message: *Boots on the Ground*

by Marty Hayes

Questions from members and callers to the Network offices lead me to believe that a discussion of our *Boots on the Ground* program would be a timely topic for this month's column, so let me



explain to all our current members what the program is and how it works.

Our *Boots on the Ground* program was established two years ago in response to concern that many members had not been able to locate a Network Affiliated Attorney in their

local area. Consequently, we set up a procedure through which a Network member could call a private phone number only known to our members that would set into motion a series of responses to get that member legal representation after a self-defense incident. Here is how the program is set up to work.

If a member is arrested or otherwise in custody following an act of self defense, then a member of their family or a "trusted other" should call the *Boots on the Ground* phone number located on the back of the letter on which the membership card was mailed. Now, I typically have the "Boots" phone with me 100 percent of the time and it is by my side during evenings and weekends. Of course, that doesn't mean it can be answered immediately, because sometimes I am teaching firearms classes and might not hear the phone, I have been known to take a shower now and then, and finally, when I travel I ride motorcycles a lot of the time and I can't take a call while riding. When those are the conditions, I make every effort to check the number often enough to not have missed a call for any length of time.

Whether I answer immediately or call back within a reasonable amount of time, I will then have a conversation with the caller. I do not mean talking

to the member but rather their family member or trusted associate, as I have no attorney-client privilege with the member. During this discussion with the trusted other, I will learn what I can about the incident and find out if the member has legal representation. If they do have legal representation, I will instruct the trusted other to have that attorney call me. I want the attorney to know that this case needs top priority at the moment, and that they will be getting paid. I will discuss what I can with the attorney and make arrangements for the fee retainer to be paid to the attorney by the Network.

The first priority is to make sure the member has competent legal representation. At this time, I will also decide if I should travel to the location of the incident. If I get the feeling that the interests of the Network and the member would be well-served by my presence, as would likely be in the case of a self-defense shooting, I will drop whatever I am doing if I can and get on a plane. Or, if my time is irrevocably committed at the moment, I will call on another Network representative to do the same. Next, let's explore what needs to happen if the member is not represented by counsel.

The first thing I will do is check to see if we have a Network Affiliated Attorney in the area, close enough to respond immediately to the member and provide representation. One thing to remember, here in the calm of your home office, living room or even reading this on your iPad, is that it is ALWAYS the member's responsibility to find and hire the attorney of their choosing. The Network doesn't supply or assign attorneys. Even if a Network Affiliated Attorney is the member's choice, the member must be comfortable with and willing to hire the attorney. The Network will forward a fee retainer to the attorney of the member's choosing to help pay for that initial representation. If the member doesn't want to hire the closest Network Affiliated Attorney, then we will help that member retain an attorney they choose.

As earlier noted, if there is no Network Affiliated Attorney in the area, a Network representative—probably me—will hop on a plane or get in the car and travel to the member's location. The initial mission will be to find a good attorney for the member, bearing in mind that this might take a day or two. During this time, if the member is in jail, they need to cool their heels and keep their mouth shut.

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Circumspect behavior during the aftermath is part of the responsibility an armed citizen voluntarily accepts when choosing to go armed. Armed citizens need to know that they might spend some time in jail because of their voluntary act of self defense. If you are not ready to accept this responsibility, then you might re-consider your choice to be armed, and frankly reconsider your decision to remain a member of the Armed Citizens' Legal Defense Network. A shooting aftermath is a serious situation, the reality of which members need to understand.

In addition to helping our member find legal representation, I or the Network representative will also talk with their family to make sure they understand what is occurring and why. Depending on the specifics of the situation, I might stick around for a few days or come back home; those decisions must all be based on the individual situation.

So folks, that is the Boots on the Ground program as it exists today. Our goal is to get competent legal representation for our member as soon as possible after the incident. Because each situation will be different, our response plan must remain broad and general, so we retain the latitude to handle the inevitable challenges case by case and to the best of our ability.

Who Are our Network Affiliated Attorneys?

Recently on our Facebook page the question was asked how we find and vet our Network Affiliated Attorneys. That is a good question and it deserves a more detailed answer than I am willing to post on social media. Instead, I told the person asking the question that I would address it in my journal column this month.

Currently, we have over 220 Network Affiliated Attorneys on board. They are full members of the Network. We do not charge them a membership fee, because their value to the Network greatly exceeds our \$85 yearly dues. Where did these attorneys come from, and how have we screened (vetted) them?

The Network Affiliated Attorneys are practicing attorneys who have come in contact with the Network through a variety of ways, have agreed with the principles and goals of the Network, and agreed to assist our members with at least initial

representation after a self-defense incident. Network Affiliated Attorneys do not have to be experienced criminal defense attorneys, although if they practice in that field, it is a bonus.

What we do ask of these attorneys is that they be pro-gun and willing to share their after hours contact information with members, so they can respond after normal business hours if necessary. It is a very powerful message to police and prosecutors for your attorney to show up at midnight at the jail, requesting to talk with you, their client.

So, what happens if the local Network Affiliated Attorney is not a criminal defense attorney? That is not necessarily a bad thing because in the long run that lawyer may or may not be the attorney to take your case to trial. Instead, we have been working to put together a traveling "dream team" of attorneys and experts, who can affiliate with a local attorney and handle a trial. It is vitally important that the attorneys and the team handling your self-defense trial understand why trying a self-defense case is fundamentally different than trying a regular criminal case. The Network's team can provide that guidance.

Now, back to the original question: how did our attorneys come to affiliate with the Network? Most are a result of member referrals. Others have come to our attention when we met them either at the SHOT Show or the NRA convention or other firearms and shooting events. Many attorneys have contacted us directly after reading magazine articles about the Network, or hearing me speak on one of the many podcasts I have done. Lately, some have contacted us as a result of me being on The Best Defense TV show. All of our Network Affiliated Attorneys are volunteers. They add their name to our list for no cost, and they firmly believe in the right to keep and bear arms, along with agreeing with the Network principles. They have all been sent the Network's DVD series so they receive the same educational materials as our members, and many times we get very complimentary comments from them about the DVDs.

We are always working to add affiliates to our list of Network Attorneys. If we do not have an attorney in your area, why don't you find one for us? At the

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Network, the people who do the office work are kept busy with the day-to-day operations. When we have extra time, it is spent promoting Network membership growth.

Since so many of our Network Affiliated Attorneys have come to us through the recommendations of our members, we have learned that this is the best way for us to add to our attorney list because these professionals are the men and women that Network members want to represent them. What more powerful recommendation could there be? If you would like to see what is involved in locating a suitable attorney in your home area, please see the article I wrote about this in the October 2008 Network eJournal <http://www.armedcitizensnetwork.org/finding-an-attorney>.

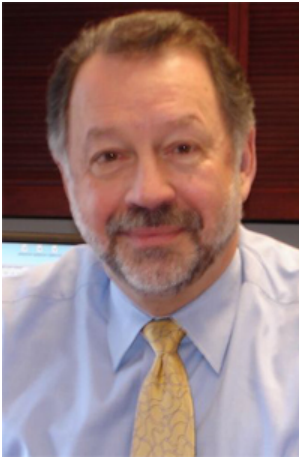
If all the above does not produce a good attorney for you, as a member of the National Association of Criminal Defense Lawyers, a large national organization of criminal defense attorneys, I have a member book of thousands of defense attorneys across the country. I have no doubt if I had to find an attorney in a specific area, I could start calling these attorneys and in short order, come up with several pro-gun criminal defense attorneys in your area.

During the last four years, two Network members have needed attorneys for two separate self-defense acts. In both of these cases, a Network Affiliated Attorney was close enough to assist. I am happy to report that neither case went to trial. The ordeals are over for the members and both are leading a free, non-convicted, armed lifestyle.

I hope this article has answered your questions about the Network Affiliated Attorneys.

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Vice President's Message: A Trip to the NRA Meeting



by J. Vincent Shuck

The Network again will participate in the upcoming NRA meeting. We will have a booth to recruit new members, visit with current members and to serve as a staging area to interact with

corporate sponsors. Aside from the Network's presence in the exhibit hall, the NRA annual meeting is a great event that all Network members should enjoy.

The meeting will be held at the St. Louis Convention Center, April 13–15. Admission to the exhibit hall is FREE for NRA members and their family. There will be over 500 exhibits covering every aspect of the shooting, hunting and related industries, educational seminars, as well as celebrity and world-class speakers.

St. Louis, the Gateway City, is an interesting Midwestern metropolis. It includes the Gateway Arch, located on the west bank of the Mississippi River steps away from the convention center, and the home of legendary Daniel Boone, in addition to other historical sites.



At the meeting itself, if roaming the exhibit hall with 70,000 others is not enough for you, other program activities include an air gun range, a firearms law seminar, grassroots workshops, a leadership forum, and the annual meeting of members. Further information about the meeting can be found at www.nraam.org.

To add to our involvement in the exhibit hall, we are pleased to announce that Massad Ayoob will join us in our booth. A member of the Network's Advisory Board, he is one of the country's premier authorities on the use of deadly force. A special segment of the day has been established on Saturday for Mr. Ayoob to meet and greet participants.

Certainly, our many St. Louis area members should consider attending, but others within driving or short

flying distance are encouraged to look at their schedules and ponder the opportunity to visit with Network representatives as well as participate in the other meeting segments.

We would enjoy seeing you in St. Louis. Marty, Brady, Mas and I will be in booth # 231 – hope to see you there.

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Network's 6th Educational DVD in Distribution

Articulating what occurred during an attack without making mistakes about specifics, or guessing at details during intense questioning about uncertain facts are among pitfalls that all too frequently trip up armed citizens after they've acted justifiably in self defense. To combat these problems, Network members receive education preparing them to better manage the aftermath and teaching why their recollections of and perceptions during a critical incident are often extremely unreliable.

Understanding and Explaining Altered Perceptions of Participants and Witnesses of Violent Encounters is the title of the Network's sixth educational DVD produced to educate members about the unreliability of our senses during a life-threatening emergency, as well as how memories of such events can be so distorted that the very people involved cannot give a reliable account of all of the details. Master instructor Massad Ayoob, internationally recognized for his lifetime work of teaching police and citizens about these and other topics bearing on the use of deadly force in self defense, presents this lecture on DVD.



The Network's sixth educational DVD was recently mailed to the Network's multi-year (3- and 10-year) members along with those who have already made their fourth year's membership renewal. Members who will be renewing their membership during 2012 will also receive this title.

As the late-night commercials say, "But wait, there's more!" And indeed, for Network members making their first, second and third renewals, we are mailing additional educational DVDs because starting in 2012, the Network introduces a substantial change to the way we distribute our educational DVDs to members.

The history of the Network's educational DVD lectures is this: when the Network began operations four years ago, we knew that the better educated our members, the fewer instances of poor decision making and errors in judgement they would suffer. We created three programs on DVD, *Use of Deadly Force in Self-Defense*, *Handling the Immediate Aftermath of a Self-Defense Shooting* and *Defending a Self-Defense Shooting*. The next year, we added the DVD title *Recognizing and Responding to Pre-Attack Indicators*. Last year, in 2011, *Additional Considerations When Using Deadly Force* joined the Network's DVD titles as our fifth production. As we announced at the beginning of this article, now a sixth title joins our line up of educational DVDs.

In the interest of getting more educational information into the hands of Network members, we are now sending all six of the DVD titles in our series to our members. The expense of replicating the additional DVDs has been a budgetary strain, so to make this increase in benefits manageable, we must wait until existing members renew to send them the DVD titles that they do not already have. We hope members will understand; postage and shipping has become prohibitively expensive. With our membership list of nearly 5,000, the only way we can realistically afford to send the additional DVDs is if we link this education expansion to each member's existing renewal when we are already mailing them a package.

Understanding and Explaining Altered Perceptions of Participants and Witnesses of Violent Encounters is receiving accolades from members to whom we sent it, those 4th year members as well as members who've purchased 3-year and 10-year memberships. When your membership renewal date comes up, we hope you will renew your membership. We're eager to send all the DVDs necessary to bring your collection up to date, so it, too, includes our first through sixth productions.

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Network Affiliated Attorneys Answer Brandishing Question

Thanks to the generous help of our Network Affiliated Attorneys, in this column we help our members understand the world our affiliated attorneys work in, demystifying aspects of the legal system for our readers.

The current question comes from concern expressed by concealed carry licensees that they don't know at which point in a developing confrontation they are allowed to draw and point a firearm at an assailant as one of their tactics to escape imminent attack. In a lot of states, displaying a firearm is termed "brandishing" and is a crime. Armed citizens aren't sure how their claim of "self defense" is invoked to avoid being found guilty of brandishing a weapon.

We asked our affiliated attorneys: "Can you explain your state laws on displaying a weapon to stop an attacker? When does the law allow pointing a gun at an assailant during self defense?" Their answers were so comprehensive that this column is a continuation of answers received and we will continue covering this question next month, as well.

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In answer to your question, under Michigan law brandishing is a crime. However, more often now the prosecutors tend to charge your proposed scenario as the even more serious charge of "felonious assault," which in Michigan is a four year felony defined as "a person who assaults another person with a gun, revolver, pistol, knife, iron bar, club, brass knuckles, or other dangerous weapon without intending to commit murder or to inflict great bodily harm less than murder is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$2,000.00, or both."

This obviously ups the stakes greatly on a case like you described as this person is not just facing a simple brandishing charge, they are calling it a

felony and the person could get a maximum of four years in prison.

We have seen this happen three times in the past year and we are currently defending an individual who was charged with felonious assault when he was threatened by a road raged individual and showed that individual his gun as a warning to curtail the road rage. Because the client "showed the gun," the prosecutor concluded he should be charged with felonious assault. We are currently defending the case, have requested a jury trial and we are aggressively fighting the case.

But, this is the really unfortunate reality that ensues when you show your gun or fire your gun. Even though it is clear to you it is self defense, the police, detectives, investigators, crime lab staff, and prosecutor are all going to be scrutinizing each move you made defending yourself to twist it into somehow using your gun to commit a crime. These days are not the days of our grandparents, where the local Sheriff was your high school classmate. In current times, when the police are called to a gun incident, they are not there to be your friend, but to gather evidence for the charging of crimes.

So when is it appropriate to show or point your gun? Unfortunately, the system is currently set up that you may have to have a jury of 12 answer that question for you. My advice would be to only show or use your gun after you have exhausted all reasonable means to avoid the situation or de-escalate the situation. But when you truly feel you need to show or use it to defend yourself, remember that each thing you do from that point on will be collected and reviewed by police and prosecutors, and the police report that the officer turns into the prosecutor will be his or her rendition of what you said, and not what you actually said and meant, and that is why on the back of my card that I give to Concealed Pistol License holders, I have the following advice for what you need to say if interviewed by police once you have shown or used your gun in self defense:

1. I assert my right to counsel
2. I do not consent to any searches or seizures
3. I would like to be treated for shock
4. I assert my right to remain silent (and then shut up until your attorney arrives).

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I am always very concerned when someone asks a "does the law allow" question. The true answer, in every case, is "it depends."

There are at least a dozen Pennsylvania statutes that will potentially bear on this question, and the outcome will turn upon the specific facts of each particular case. It can be very technical. Change one fact and we go from "the law allows" to "the law does not allow," or vice-versa. Categorical answers are simply impossible and seeking them is a fool's errand.

Even this apparently straightforward inquiry, for example, is not at all straightforward. When we say our hypothetical actor means to "stop an attacker," do you mean show him a gun so that he is warned that if he persists he could get hurt? Or do you mean causing the attacker to be afraid of being seriously injured or killed? Is there a difference between a "threat" and a "warning?"

I will presume we mean our actor is pointing the gun at the assailant in order to cause him or her to be afraid of being shot and thereby seriously injured or killed, and to refrain from initiating or break off their attack in response to that fear. I will also assume our hypothetical attacker is not a peace officer acting in the line of duty.

Different rules apply to peace officers and how they might use force in the line of duty. With that understanding, our hypothetical actor is committing a criminal assault.

In Pennsylvania, to display a firearm of any caliber or description, or even a realistic facsimile of a firearm, constitutes a criminal assault if it is done in an attempt "by physical menace to put another in fear of imminent serious bodily injury." The keys are "physical menace" and putting another in fear. Notice that one needs not even "point" the gun. "Display" is all that is required, and a firearm drawn to low ready would certainly qualify as a display.

Since our hypothetical actor is pointing a gun at another person in an attempt to cause that person to fear being shot, it is an assault. The assault will

be either a simple assault or an aggravated assault. What kind of assault it is will depend upon whether the assailant is performing one of many specified jobs at the time.

If your assailant is an average Joe, it is simple assault. If, however, your assailant is a member of one any number of public service professions [see <http://www.legis.state.pa.us/WU01/LI/LI/CT/HTM/18/00.027..HTM>] of the following occupations, and they are in the performance of their duties at the time, the assault will be considered an aggravated assault. The people/occupations in question include any of the following: police officer, firefighter and many, many others as defined in the criminal code you can read at the link above.

The real question behind your question whether our actor, having committed an assault of one sort or the other, will have a defense. One might argue they did not mean to scare anyone. Good luck with that one. The more commonly raised defense is "justification." Since we postulate this is being done in self defense, justification is the defense we would be shooting for (no pun intended).

The commission of the assault will be legally justified if our hypothetical actor reasonably believes pointing the gun to be necessary to avoid an evil which is worse than the evil sought to be prevented by the law which makes the assault illegal. In your hypothetical, the evil being prevented is an escalation of the event to the point where someone is going to actually use deadly force, and the evil which the assault statute is designed to prevent is the putting another in fear of imminent serious bodily injury by physical menace. Which is worse?

It would be hard to imagine a court finding that making someone afraid was not an evil worse than either the aggressor or the defender actually applying deadly force. Of course, if the Government can prove display of the weapon was not in fact "reasonably necessary," the defense will fail. There are other conditions as well.

If our actor was either reckless or negligent in bringing about the situation under which the choice of evils was necessary, the justification defense will fail. There are lots of ways one might negligently or recklessly cause or provoke a situation, too many to

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try to imagine. But one warrants special notice.

Bear in mind that pointing a gun might actually precipitate an attack, perhaps from a third party our actor does not even know is involved. This might be the proverbial girlfriend with the .25 auto in her purse, who believes her loved one is about to be killed by our own hypothetical actor and she opens fire. It might be some well-intended but not very prudent CCW holder who happens by. If our actor precipitates an attack by a third party, and is then compelled to use deadly force against that third party, the justification defense may well fail. There may also be a civil suit of significant merit.

In addition, if there are any statutory exceptions to a justification defense dealing with your specific situation, the defense will fail. And if there is any "legislative purpose to exclude the justification claimed" the defense will fail.

Got all that?

Applying these rules to our hypothetical actor "displaying a weapon to stop an attacker," the attack must represent an immediate threat of serious bodily injury or death. Otherwise, the "evil to be avoided" is less serious, and may not justify the commission of an assault. Is the attacker an agitated paramour trying to slap our actor's face, or is there a straight-razor involved? Someplace in between?

Introducing a firearm into any situation will, in Pennsylvania, substantially increase one's legal exposure in too many ways to list here. (One example is the application of our five-year minimum sentence requirement for specified crimes committed with firearms, including aggravated assault.) Both for this reason and due to fact the evil one seeks to prevent must be very serious to justify an assault, I am confident in advising that pointing or displaying a firearm is a defensive tactic that should be reserved for situations where one has good grounds to believe serious bodily injury or death will occur if they do not succeed in dissuading the attacker.

You have postulated our actor is pointing a gun "during self defense." Let's assume, then, the actor does hold an objectively reasonable belief that he or she is in immediate danger of suffering serious bodily injury or death, of being kidnapped or of

being subjected to involuntary sexual intercourse by force or threat, to himself or to a third party who is or would be reasonable in holding a like belief, but the actual use of deadly force is not immediately necessary to avoid such injury or death.

Got all that, too?

Now that we have settled that much, note that self defense, in the context of the use of deadly force, also requires that: our actor's fear of serious injury or death is caused by the use of unlawful force by the aggressor; our actor knows the aggressor is not a peace officer or one assisting a peace officer in effecting an arrest; our actor does not know the aggressor is using force under a claim of right to protect property (where the actor has not been previously unlawfully dispossessed of the property and is making a reentry or recovering the property); our actor did not initially provoke the confrontation with the intent of causing serious bodily injury or death in this same encounter; our actor either does not know of any avenue of safe retreat or the confrontation is occurring in his dwelling or place of work (unless he was the initial aggressor, or has been assailed in his place of work by another person who the actor knows also works there) or our actor is anywhere he has a lawful right to be, is not engaged in any criminal activity, lawfully possess the firearm he is pointing at his assailant and the threat presented by his or her assailant arises as a consequence of the assailant displaying a firearm, a replica firearm or some other deadly weapon which appears to be capable of lethal use.

Keeping all that in mind as well, you will see the only difference between our hypothetical circumstances and circumstances where the use of deadly force (and not merely the threat of same) is justified is that our actor apparently believes the use of deadly force may still be avoided by pointing his firearm and, presumably, issuing threats or instructions. Under such circumstances, our actor obviously does not have an actual belief that the use of deadly force is immediately necessary because, by definition, something that may still be avoided is not immediately necessary.

Assuming that is what you mean when you say "in self defense," and assuming a prosecuting authority cannot disprove any one of these factual propositions beyond a reasonable doubt, our actor

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will have a valid defense in the event authorities elect to prosecute him or her for a criminal assault if our actor reasonably believes a display of the weapon (and attendant threat) was reasonably necessary to avoid someone being subjected to deadly force.

But, I ask you, who among us can work through all of the above before making such a decision? And, in any case, I submit this is not even what one should be thinking about during a potentially life-threatening emergency anyway.

My advice, as a defensive tactics instructor with a legal background, is that one should bring a firearm to the ready ("low ready," "contact ready," what have you) only for the purpose of making it more readily available for immediate use under circumstances where one actually and reasonably

believes he might imminently be forced to resort to the use of deadly force, under circumstances where the application of deadly force would be legally justified, but where there is such question in one's mind about whether the use of deadly force is actually necessary that the decision to shoot has not been made. In such a case, bringing the weapon to the ready is, first and foremost, a tactical necessity.

If bringing one's weapon to the ready happens to also communicate to one's adversary that he should abandon any hostile designs, so much the better. Go with it. But showing a weapon as a form of communication is a very risky proposition, both legally and tactically. I would avoid it.

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

Book Review: The Art of Modern Gunfighting The Pistol: Volume 1



by Scott Reitz with Brett McQueen
216 pages, soft cover, full color, heavily illustrated
INTACT Publishing
ISBN 979-1-936643-00-4

Reviewed by Marty Hayes

Read a good gun book lately? I mean a really good one? One filled with war stories about good guys shooting bad guys, and how to do it right? If not, may I make the suggestion that you find a copy of Scott Reitz's new book, *The Art of Modern Gunfighting*?

I have been reading Reitz's monthly column in S.W.A.T. Magazine for several years, and while I have trained with most of the "names" in the industry, Scott Reitz is one of those "names" from whom I have not yet had the pleasure of receiving training, and so when I saw he had a book out on the topic, I took the first opportunity to get one.

To say that Scott Reitz is an expert in confronting the criminal and prevailing over him would be an understatement. In his book, which is somewhat autobiographical in nature, Reitz starts out matter-of-factly detailing the different shootings he has been involved in over his years as a Los Angeles Police Department patrol officer and SWAT team member. Reitz's first shooting required a feat of marksmanship that reminded me of my friend and mentor, the late Jim Cirillo. Reitz explains that to save the lives of his partners he took a shot on a moving target at night from about 15 yards, using the Harries flashlight technique. So much for the

statistically average gunfight of 2-3 shots fired, at a distance of under three yards! One shot, one dead felon.

A week later, Reitz was again involved in a near-death situation, where a felon on another S.W.A.T. callout tried to decapitate Reitz with a butcher knife. Reitz drilled him through the chest with a .45, but apparently the would-be cop killer hadn't read the book on wound ballistics and he kept coming. Reitz's second aimed shot struck the guy in the head, ending his life. Reitz writes about these two instances:

"We covered the downed suspect in silence, as smoke and debris floated in the hallway illuminated only by our flashlight beams. I was now involved in a second OIS (officer involved shooting). Both had occurred during SWAT-related missions, but in more than eleven years I had been on many, many previous missions in which I did not fire a shot. Now I had been involved in two shootings in one week almost to the hour. It was unbelievable, yet it also carried a valuable lesson. Deadly-force incidents can occur on any mission, at any time interval. There is no pattern to shootings, there is no calendar, no syllabus, no forewarning and sometimes there is no indication that you are about to 'get into it.'"

Reitz goes on to explore other lessons he learned during his five on-duty officer-involved shootings, including a lengthy discussion about the 1992 riots in Los Angeles. Reitz includes this discussion in his book, correctly in my opinion, to give readers a perspective on where he is coming from as a firearms trainer and as an author. But, the book isn't focused on his war stories, though they make for a pretty engaging first chapter.

Immediately after this first chapter on his shootings, the author explains the many different aspects of shooting for blood, also known as "gunfighting." What Reitz learned on the street (confronting criminals and being involved in these shootings) is invaluable from an instructor's perspective. But what also is extremely valuable is the study of other people's shootings, which Reitz studied, assigned as part of the review of other L.A.P.D. officer involved shootings. He also worked as an expert in both the Federal and State court systems.

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This broad background positions him well to discuss what works and what doesn't work in interpersonal life and death situations involving firearms.

Reitz explains what works in gunfights. It is a firm, unyielding and fundamental grounding in the basics of pistol craft. He doesn't provide a training résumé in the book, but it is very easy to see who influenced his thinking and training in his formative days, and that would be Col. Jeff Cooper. As many more advanced students of the art know, Col. Cooper pretty much defined the modern art of gunfighting by his work as founder of the American Pistol Institute and Gunsite Academy. And, while shooting techniques evolve (and in some cases devolve) over the years, the Modern Technique of the Pistol, as quantified by Cooper and his instructors is a tried and proven method of resolving interpersonal deadly encounters. But, lest one should think this book is simply a rehash of Cooper's Modern Technique doctrine, understand that Reitz has taken what was good about the Modern Technique and incorporated that good with what he has learned about gunfighting from his own experiences, and that is made clear when discussing shooting stances:

"In a gunfight there is often no way to utilize either of the classic shooting stances," he writes, referring to Isosceles and Weaver stances. "Shootings have occurred from every conceivable unconventional position that you can envision. In a vast number of shootings, the subject of stance—on which so many people have mired themselves in controversy—would be of a purely academic nature."

He really doesn't care what stance a shooter utilizes, as long as it works for the shooter in the variety of instances in which the shooter might find him or her self.

The Art of Modern Gunfighting is written from a professional police officer's perspective and a law enforcement trainer's experience, and the instruction directly targets his brothers and sisters in blue. But this should not detract from the lessons that a private-sector armed citizen (such as most all members of the Network) can learn from the book.

Reitz does not go into police tactics, and correctly so. What he does go into, in great length and detail, are manipulation and shooting techniques that are tried and true. A person mastering the skills explained and illustrated in this book would be quite well equipped to prevail against the most hardened of criminals.

Also of importance to Reitz, and effectively communicated, is the combat mindset needed to survive a critical life and death incident. First, he clearly discusses many of the legal issues surrounding the decision to use deadly force in self defense, and I could see nothing I would criticize in his chapter on lethal force, which appears early in the book. Later, in the closing chapters he fully addresses the concept of using aggression and decisiveness to stop a threat against you or loved ones, once the threshold of use of deadly force in self defense has been met.

In closing, *The Art of Modern Gunfighting* is not your typical 6" x 9" trade paperback. Instead, it is full-sized and full-color, with plenty of descriptive photographs to make sure the reader understands exactly what the author is trying to convey. Printed on heavy, slick, glossy paper, it has the feel and appearance of a coffee table book, but one in which the subject matter is deadly serious. Because of this obvious quality, at \$34.95 it is at the higher end of the price range, but considering the content, background and the fact that this is one book that will become a permanent part of any serious student of the art of defensive handgunning, it is a recommended purchase. Copies can be obtained at <http://www.internationaltactical.com/book1.html>

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Please enjoy the next article.]

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Networking

by Brady Wright

As we move into March I may not be alone in thinking, "Where did the winter go and what's happened to my sense of time passing?" Seems like we just got past the holidays!

One thing that makes the time go by is all the conversations I have with the growing number of affiliated Network members. Our membership count is knocking on the door of 5000 members and over the last couple of weeks I have spoken with or emailed a lot of the affiliates who have helped us swell our ranks. It's the best part of my job and there have been more than usual as a result of the email I sent out a couple of weeks ago to our affiliates. We decided here at the Network brain trust that touching base with our affiliates would be a good idea. So many of you responded that I literally don't have room to mention everyone. It's kind of fun to wake up to a stuffed inbox every morning!

After sending out an emergency delivery of booklets and brochures, I am finally beginning to see the walls and floor again here in the fully automated, state of the art logistics and shipping center (my garage).

It was great to hear from folks like Eugene Leary, out in Newhall, CA. His outfit, Leary and Associates, does NRA training, Utah CCW classes and he is Instructor and President of the Americana 1800 Adventure Club. He teaches approximately 200 students a year and the club membership is over 250. I was glad to hear from you Gene, and let me say, "Nice work!" Readers, if you are in California and would like to learn from Gene, you can call him at 661-803-8120.

Another really active Network affiliated member is Joe Lockett of The Barefoot Eagle Company. (This is my new favorite company name, this month!) Joe has a gunsmithing operation and gives out a Network booklet to each client. He says he gets lots of good feedback from customers and also commented that he really appreciates all the effort that goes into our monthly newsletter. You can ask Joe about his work at <mailto:tbec65@bellsouth.net>. I had the pleasure of surfing past the website of the great folks at Gun Schools Inc., in Florida. If you want to see a really well done site, it's worth the time to check out their layout, class offerings and general professionalism at <http://www.gun-school.com>. They win the prize for nicest website for this month. (We have no budget for an actual prize. What they win is my unadulterated admiration!)

Jerry Gibson, at Gibson's Guns, has been handing out the booklets to his customers and talking about the Network while waiting for the instant background check to go through. He says that his first-time customers have been interested in the wealth of information provided. Good work, Jerry!

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One thing that many folks are asking for is more booklets, and we're going to take care of all of those who need them. You know that you can email me directly for an order brady@armedcitizensnetwork.org but when you do that, please make sure to tell me the specific number of booklets and brochures you want. Your version of "more" and mine may be different! 240 booklets are packed in each case, but if that sounds like a lot I can send any reasonable amount less than that. The bigger volume outfits, like our friends at Blade-Tech and CCW Breakaways, usually get multiple cases a month, but I'll happily send out 50 or 100 to anyone who needs them. Just let me know. We've also discovered that the magicians at the Post Office are currently taking about three weeks to deliver a box by Media Mail, so please don't wait until the last minute to let me know you are running out.

Huge thanks to all who recommended the blogs, podcasts, websites and Internet radio shows for us to explore. Marty is doing many interviews and we have more in the hopper. We take your recommendations seriously and follow up on the contacts you suggest. Sometimes it takes time to schedule interviews, but we're working on it!

We are getting closer to the annual NRA meeting, too. As noted in the Vice President's column, the Network team will be there for the entire show. If you plan to attend, stop by the booth and say hi. I would personally be honored to shake our members' hands and talk about how we can make the Network an even bigger success. That's what Networking is all about!

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



Editor's Notebook

by Gila Hayes

The Network has enjoyed two months of unusually strong membership growth and we thank each new member for becoming part of the growing organization that is the Armed

Citizens' Legal Defense Network, Inc. You'll be happy to learn that Network membership is nearly 5,000 members strong, and as a result, the Legal Defense Fund is also growing larger with each new and renewing member.

Let me express a big thank you to all of you for making the Network part of your personal defense preparations. Our members frequently express their fervent hope to never need the Network's assistance with legal costs, but they appreciate the peace of mind being part of this support organization brings to them.

Now and then something interesting comes across the Internet, and just in case your reading lists is a little different than mine, you might enjoy a few bits of info that I found useful.

I recently browsed an interesting and creative infographic at <http://ammo.net/obama> illustrating increases in gun sales and gun ownership. While the presentation is political, putting aside discussion about WHY so many Americans have decided to exercise their 2nd Amendment rights, it also portrays an impressive picture of armed America. If you've not already seen it, go and take a look.

Four years of vigorous growth of gun sales and increases in the numbers of new gun owners mean that there are a lot of people in the gun stores and shooting ranges – folks with whom you are regularly rubbing shoulders – who are very new to the armed life style.

Think about the hours and hours that you've spent in training classes, reading and studying books and articles by recognized leaders like Massad Ayoob, John Farnam and more, watching educational

DVDs including, I hope, those sent to you by the Network, and catching up on current concerns by reading the Network journal and other websites. Ponder how all that training and information changed your ideas about self defense from scenarios that could serve as an Old West movie script into strategies that now reserve employing the gun only when death or serious injury are unavoidable.

After patting yourself on the back for putting in the time and effort to understand the role of deadly force in your self-defense strategies, stop and ask how we can raise the thousands of new armed citizens to a similar level of understanding. One tool is the Network's 24-page booklet *What Every Gun Owner Needs to Know About Self-Defense Law*, and we are shipping it out by the case to firearms instructors and gun stores every day. Our members are always welcome to ask for copies, too, and if you can leave a stack at your gun club or ask your gun store manager if he or she would be willing to give copies to the store's customers, you'd be helping the Network grow while helping all our new brothers and sisters in arms clearly understand what is involved in the aftermath of using a gun in self defense.

One need only scan the Internet for reports of the difficulties armed citizens face after firing their guns. A member sent me a link to a story of a man who fired a shot into the ground while attempting to stop a burglar. It illustrates how warning shots can cause tremendous trouble, and how difficult it is to convince responding police that your life was at risk if you shot into the ground to make the offender stop and do as you commanded. Read <http://www.fosters.com/apps/pbcs.dll/article?AID=2012702219939> for the initial report.

In that case, fortunately, the prosecutor dropped the charges several days later and I believe the armed citizen was extremely lucky that things turned out as they did. Several years ago, the courts in my state sent a man to jail for an incident that began much as the one in the NH story. One afternoon several years ago, a school teacher went to get his gun before heading out to search for a burglar who had stolen jewelry from his home. Unfortunately, he did manage to locate a man believed to be the burglar.

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During a confrontation, he fired the gun but the burglar ran off and was found dead later.

Society, be that citizens in the community, police, prosecutors or judges, won't accept using deadly force to get your belongings back. When a homeowner goes out looking for a burglar, that is the overwhelming impression of the incident. Whether or not in the moment before the shot rings out the burglar placed the homeowner in fear is too often lost in the first impression that here we have someone with a gun who left the safety of their home to go out to confront the thief. That may be the farthest thing from the truth, but it is a darned hard impression to overcome!

The next instructive story came to me via another member who pointed out this news report about the aftermath of a self-defense shooting in America's heartland <http://www.desmoinesregister.com/article/20120222/NEWS01/302220033/-1/FAMOUSIOWANS/Update-Man-acquitted-shooting-happy-free-now-homeless>

Too many in the gun world oversimplify the parameters governing using a gun in self defense to such an extreme that the impressionable new gun owner thinks that if they can justify their actions everything will be OK.

The Des Moines story is a textbook iteration of the cascade of bad consequences that can be part of the aftermath. Poor Mr. Lewis was jailed for nearly

four months, during which time he was evicted from his apartment, his belongings taken, and even now that he is free he lacks the resources to obtain housing until he can earn some money. I was frankly surprised to read that he was able to go back to work, as employers may look for reasons not to put people back on the job after they've been jailed, and finding a job after being in the news for being involved in a shooting is usually a no-win situation.

I'm reminded of a comment Massad Ayoob makes in one of the video lectures that is part of our Network member education DVD series. Ayoob, with some exasperation, comments on Internet forum posting opining that in the end, a so-called "good shooting" will turn out OK. That's like saying that because today's wonderful medical miracles cured your cancer, it was OK that you had cancer, Ayoob comments dryly.

Oversimplification of a complex topic is dangerous! If you know armed citizens who need to understand the serious responsibility that comes with gun ownership, why not use the Network's educational booklet to start a conversation about realistic expectations and their misconceptions?

*[End of March 2012 eJournal.
Please return next month for our April edition.]*