



Use of Lethal and Non-Lethal Force Without Guns in Self-Defense

by Marty Hayes, J.D.

Network members must at times travel and work in locations where they cannot carry a gun, either because it is illegal and they cannot obtain the requisite concealed weapon permit or perhaps they work in what has become known as a "non-permissive environment." It is the position of the Armed Citizens' Legal Defense Network, Inc. that our members should not violate laws governing carrying handguns for defense, but instead, if forced to choose between violating the law and going gun-less, develop a range of defense skills including non-firearm and non-lethal defense methods. We limit grants of financial assistance to fight an unmeritorious prosecution to situations where the member is legally carrying the weapon used in defense.

We recommend "layered defense" preparations to our members. That means a person should not only have a gun for self defense, but also have the means to mount an intermediate defense with pepper spray, Kubotan/mini-baton, cane or empty hand self-defense techniques. However, use of intermediate force while also armed with a deadly weapon is **not** the subject of this treatise. Our discussion today is about using non-gun defense methods when deadly force would likely be warranted or when there is justification for at least defensive display of a deadly weapon with commands to stop the offending activity. With this in mind, let's start our exploration of non-firearm use of lethal force and non-lethal force when deadly force is likely merited. The tools? Highly effective intermediate weapons such as a

knife, a Conducted Electrical Weapon, pepper spray or an impact weapon that can be possessed legally and if used effectively, offers a reasonably good chance of stopping a deadly force attack.

As with a firearm, successfully employing an alternate weapon requires an advanced level of skill and documented training so you can articulate why you employed the weapon. Lack of documented training results in not having trainers available to testify in court about how you were trained and why your use of force was reasonable. Even if you possess the skill to use the weapon effectively, for this reason alone, you also need to have training. Our further discussion assumes you have training in the non-gun defense method under discussion.

Use of Knives for Self Defense

When traveling through states where I do not possess a concealed weapon permit, I will replace the gun with the knife as my "go-to" weapon. In fact, as I am writing this article, I have just done exactly that, stopping at the California border and switching the legally carried Colt Defender concealed beneath a light jacket with an unconcealed, legal folding knife.



Effectiveness of a hand-held weapon such as a knife is limited to close to contact distances, and thus I find it a less than ideal primary weapon. On the other hand, we know about knife lethality and so do the bad guys. Lawful use of a knife in self defense is very dependent on your local state's statutory and case law.

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Research this aspect of the law, talk to your local attorney and make sure the knife that you choose is legal to carry. Get a good start at <http://www.handgunlaw.us/documents/USKnife.pdf> but you still need to verify knife laws in your jurisdiction.

So, assuming that it is legal to carry a knife, we must next ask, when and how would you deploy a knife for self defense? Knife deployment breaks down into three categories. The first category is surreptitious carry. For over 20 years, I have carried a small folding Spyderco knife as a money clip. With it, whenever I am standing in line to pay for something, I have a deadly weapon in my hand, ready to press into service as a defensive tool if needed. No, the knife blade is not extended, but that takes only a moment to accomplish. I take a lot of road trips, both in cars and on motorcycle, resulting in a lot of stops at rest areas, many at night. I routinely carry a larger folding knife in my right hand when walking into the restroom at night. If there is an attacker or two lurking inside the restroom, or behind the bushes cleverly placed near the entrance/exit of the restroom, I have a fighting chance to mount a good defense.



The second type of deployment is the defensive display of the weapon to ward off danger. Threatening someone with a deadly weapon—in this case, a knife—without clear justification would constitute the crime of aggravated assault. If you display a knife and warn someone to stop what they are doing or not do what they are contemplating, you will have to decide whether to call the cops or not, assuming the defensive display of the knife works and you escape unharmed. Deciding whether or not to call police is situational, but I would err on the side of caution and make the 911 call. Remember, you have already ascertained that carrying the knife was legal, so there is no worry about a weapons charge. You will need your knowledge about pre-attack indicators that precede criminal attack to explain why you were justified in threatening your assailants with a deadly weapon.

On the other hand, you run the risk of having your knife confiscated, so bear that in mind. The Böker knife I routinely carry when traveling retails for less than \$40.00. Not a great loss. And remember, witnesses and perhaps even the perpetrators might call the cops, making you

the subject of a felony car stop 10 miles down the road if you choose not to make the phone call to be sure you are the complainant. My former police officer persona would like you to call in the crime, because police might be looking for that robbery team to solve other crimes. Your phone call might be the key to arresting and putting these guys in jail. Having said all the above, if you decide that there really is no need to call the police and that you just want to get down the road and you feel the robbers are not going to call or that there are no witnesses, then I am not going to criticize you for getting out of Dodge and getting on with your life.

But what happens if you actually cut or stab someone in self defense? You need to dig yourself out of serious trouble. By all means, in these circumstances you really need to call the cops. Without making that phone call, YOU will be the suspect in an attempted murder investigation, and if police catch up to you, you WILL BE ARRESTED. Unfortunately, the knife is seen by the courts as purely an offensive weapon, with little established case law justifying its use as a defensive weapon. Your legal defense team will have some work to do, even if your actions were justified and you really had no other option.

Articulating your intent to simply wound to stop the attack or defining your use of the knife to kill is an aspect of self defense that has yet to be fully vetted. Michael Janich has done good work in that arena, however, and readers are urged to review his interview in our Network *eJournal* <http://www.armedcitizensnetwork.org/our-journal/282-march-2013?start=1>

Impact Weapons for Self Defense

One of my favorite traveling companions is a cane given to me when my back was being pretty finicky a few years ago by one of my Firearms Academy of Seattle staff instructors. A cane makes a great self-defense tool, either as an addition to, or if necessary, a replacement for the gun. An infinite amount of training from the police use of force discipline exists to justify using a cane as a self-defense tool. It would behoove the armed citizen to study police use of impact weaponry. I take my training from the Monadnock PR-24 Training Council. The 20-year old chart from Monadnock shown on the next page is still relevant to self defense using contact weapons.

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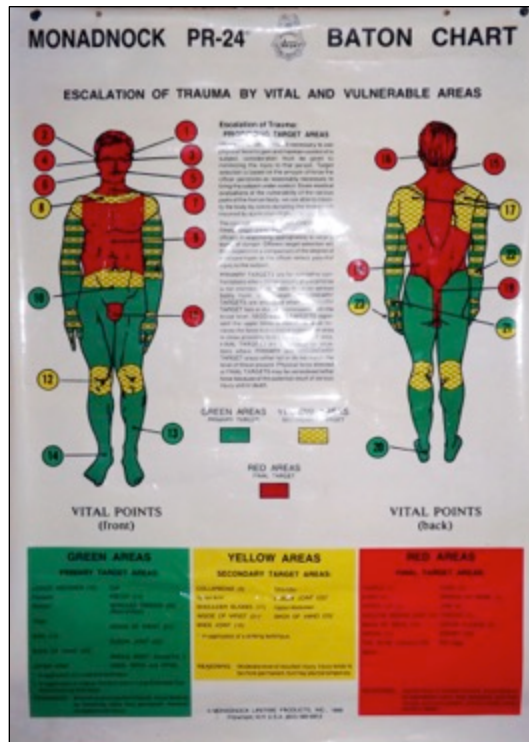
Green indicates areas where you could reasonably employ an impact weapon without fear of causing death or grave bodily injury. Applying an impact weapon to green areas will likely cause pain and bruising, but no lingering or disabling injury, hence they are also not reasonable target areas for an individual facing a lethal threat.

The yellow ink identifies areas where situation and technique determine whether or not use of an impact weapon would or should be considered deadly force. A strike to the yellow area may cause intense pain and debilitating injury. For example, a full-force strike with a cane or baton to the side of the knee will likely put the guy on the ground, with a trip to the hospital in his near future. And a downward smack on the wrist with an extended baton would likely shatter the wrist and make the assailant drop their weapon.

The chart's red areas show where an impact weapon used effectively creates the risk of injury leading to permanent disability or death. For example, front thrust with the cane into the solar plexus is also a pretty effective defensive move. If you were at risk of grave bodily injury or death from the assailant, then you would likely be justified in causing his death. You will need to be able to articulate the danger you faced, though, during the legal process. An upward full force strike to the groin, a front jab to the eye sockets or a full force smack on the neck will pretty much stop the fight and possibly cause death. Forewarned is forearmed.

Conducted Electrical Weapons

Nearly every person in the free world has heard of the TASER®, also known as the Conducted Electronic Weapon, or CEW. I was



trained more than a decade ago as a TASER® instructor when I was working law enforcement and during that training, I “took the ride.” Let me tell you, the TASER® works as advertised. I started thinking about writing this article when I came across a booth at the SHOT Show marketing the Phazzer, a CEW now competing with the TASER® <http://www.phazzerstore.com/>.

I have long wished TASER® would allow non-law enforcement folks to purchase police-type TASER@s and not just the civilian C2 version. (Learn about the differences on the TASER® website <http://www.taser.com/products/self-defense-products>). I never liked the C2 version, because it

didn't look like a serious weapon and the 15 foot maximum deployment distance was not far enough, in my opinion.

In checking out the Phazzer I found that it works much like the TASER®. To activate the unit, slide up an activator switch on the back of the gun-shaped CEW, turning on the light and laser-aiming sight. Then, a pull of the trigger fires the two electronic probes at the target, reaching as far as 21 feet. The unit will run for five seconds, long enough for the attacker to fall down. If another application of electricity is needed, just pull the trigger again. This is preferable, in my opinion, to the TASER® C2, which administers a minimum 30 second application of electricity, during which time the user is taught to set the C2 down and run away (according to TASER® training protocols). Putting the device on the ground and running away is not what first comes to mind for me.



The Phazzer looks much like a real gun and could be employed with the same verbalization as a real gun, “Stop, Don't Move,” etc. When the light and laser come on, I would expect it might be mistaken for a handgun, which in my opinion would not be the worst thing in the world. Phazzer has made a misstep, though, calling this product “The Enforcer.” Sheesh, I feel like I am watching *Continued...*

a Dirty Harry movie! I could live with the name, although I'd expect to have to explain to the court that I didn't name the thing.

CEW Effectiveness

Electronic application of force painfully locks up the muscles and the person will fall down if there is any movement at all. Consequently, one must be ready to justify the use of force where a person could fall, hit their head on a hard surface and possibly die because of that trauma to the head. For the citizen armed with a TASER® or Phazzer, employing this weapon should fall under the same guidelines as the use of a handgun, with one big exception. I believe it might be deemed legal to display as a deterrent much earlier in a confrontation than a handgun, because of CEW's track record of use by law enforcement. The TASER® gets used every day by law enforcement for application of non-deadly force, primarily in arresting combative subjects, although private citizens should probably not be arresting combative subjects and limit their CEW's use to self defense. As with all tools of self defense, documented training is the key to justifying in a court of law defensive CEW use. Both TASER® and Phazzer offer training with their products, so buyers will want to check out their respective websites to research what is available in their area.

More About TASER®

As I was preparing this article, I went to the Taser website (<http://www.taser.com/products/self-defense-products/?ref=cj>) to get current (pun intended) information about their product line. I was pleased to learn that they allow civilians to purchase their popular law enforcement models. Purchasing a TASER® X-26C comes with a hefty price tag of \$999, whereas the Phazzer is being sold direct to the end user for \$630. The Phazzer cartridges can be used out to 21 feet, and TASER® still restricts their civilian models to 15 feet. I guess they don't understand that distance is king when it comes to civilian use of force. Perhaps they will read this message and re-consider.

Then again, TASER® has a great safe use track record with law enforcement **and** the purchase of one comes with a training CD, which could be very useful in court. Additionally, if budget is a big issue for you, both

companies offer a budget model, the aforementioned C2 for TASER® at \$299.99, and the Phazzer Dragon for \$350.00. For me, though, the look and feel of a device similar to a handgun is worth the higher price. If you look at the TASER® website, you will also see the M-26C, which retails for \$499.99. Unfortunately, it is very large and not at all suitable for concealed carry. TASER® markets it as their home defense model, but for our purposes, I suspect we would rather have a gun in the home than a TASER®.

If you are considering a CEW you must realize that it is not a toy. If you decide a CEW is a viable solution for defense in a non-permissive environment, do your research well, check out the video links on the websites, and take the same approach to responsibility with the CEW as you would do with the handgun.

Pepper Spray for Self Defense

If there is one thing every average gun owner can carry as an alternative to firearms and still have fast, reasonably effective results, that choice is pepper spray.

I am not talking about the lipstick sized pepper spray typically sold at your local gun shop or in the check-out line at your local gas station. Having conducted pepper spray training for the last 20 years, I can unequivocally state that these lipstick models are pretty much worthless because they neither have the type of delivery system necessary for good self defense, nor do they contain the volume of pepper spray needed

to quickly shut down an attacker. I'll explain.

The small units are manufactured to emit a small stream when you push the activator. While the quality of the liquid is acceptable, the quantity is seriously sub-par, and all it takes to defeat the delivery system is to hold one hand up to shield your eyes, while grabbing the spray unit with the other. Inhaling the atomized particles contaminating the air in your immediate area plays a big role in pepper spray's effectiveness. One good whiff and your lungs will be compromised. A two ounce can with fogger-type delivery can do the job, but the lipstick variety just isn't up to the task.

My favorite pepper spray product is Counter Assault Systems' two ounce fogger (<http://counterassault.com/>).

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I learned about this Counter Assault's OC-10 many years ago, when the larger four ounce canister was a standard of local law enforcement. The two ounce can (pictured, previous page) is small enough to put in your coat pocket or carry in your hand. As I was wandering the aisles of the 2015 SHOT Show, I came across a fabric glove that a woman is supposed to wear while jogging, with a lipstick sized can of spray clipped to the glove. It is a neat idea and anyone with a modicum of skill could adapt it for a larger, two ounce can.



At the risk of unintentionally turning this into a training article, let me take a minute and explain one method of using pepper spray for self defense. If you let people get within arms-reach, you have severely compromised your ability to use pepper spray effectively. If you use pepper spray with a fogger type delivery in an enclosed room, you will contaminate everyone in the room, including yourself. From those facts, I conclude that pepper spray is best used on the street, preferably with the wind to your back or in no wind. If the wind is in your face, don't spray without moving.

When you do spray, you need to be retreating. First, if you back up and spray, chances are better that you can avoid contaminating yourself. Assuming that your threat is moving towards you, he will move into the fog of pepper spray, hastening its deterrent effect. An example of this can be seen on our eighth member education DVD, *Legal Considerations of the Use of Non-Lethal Defensive Force*.

When is pepper spray a good alternative to the use of a firearm? Well, obviously not if the attacker is armed with a gun! In fact, none of the aforementioned weapons is a good choice against a gun-wielding attacker! However, if the person is armed with a contact weapon AND there is sufficient space between you so you could lay down a fog of pepper spray while you back up so they have to come through the fog of pepper spray to reach you, you will increase your odds of surviving unscathed immensely. There are many qualified pepper spray instructors in the country, so with little effort, a person who wanted to get training on the use of pepper spray for self defense should be able to find credible training.

Conclusion

When using a knife, impact weapon, Conducted Electrical Weapon or pepper spray as an alternative to a concealed handgun, you need to really increase awareness and sharpen decision-making skills. For example, if I need to buy fuel I will routinely take a quick survey of the surrounding area before I pull up to the pumps. If I am not armed with a handgun, and instead carry a legal but less effective tool, I might take a little longer to survey the area and even pass up that location if I get that creepy feeling.

When I walk into a convenience store armed with my concealed handgun, I observe what is around me but do not normally hesitate before entering. If I

am not carrying a concealed handgun, I will typically wait and observe the store for a little while to make sure everything looks normal and non-threatening, and then pause and look at the area outside the store before exiting.

In addition, before relying on a knife, CEW or impact weapon, good training is absolutely necessary. As you know, I own and operate a shooting school, and have been trained both as a user and instructor in batons, pepper spray, TASER® and more. Consequently, I am comfortable carrying each of these. If I did not have that training, I would not employ them.

Never forget the law of unintended consequences. While you may not intend to severely injure or kill your attacker with an alternative weapon, you must be prepared for your assailant to die. With all of these weapons, death is possible. You may cut an artery with a knife and the guy might bleed to death. With a bludgeon, you could fracture the assailant's skull. Employ a CEW and the guy might fall and hit his head and die. And even with pepper spray, the person you spray could stumble out in traffic and get run over. Understand that while the attacker also assumes the risks associated with participating in his felonious behavior, we must still be able to articulate the particulars of the threat against us, so that a reasonable person would say to themselves, "Yes, I would have done the same thing under those circumstances."

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

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President's Message

by Marty Hayes, J.D.

Our recent foray to the SHOT Show was notable by my lack of excitement for it. Of course, this was my 21st SHOT Show, and I have seen many, many AR-15s (or whatever they are called

nowadays) along with goofy products that have no real purpose other than to sell to people who think they need them. But, the show held a few rays of light, in that I was able to meet and great several of our members, affiliated instructors and corporate sponsors. I had a good conversation with friend Tim Wegner of Blade-Tech, talking mostly about hunting and fishing. Nothing wrong with that! I ran into Ashley Emerson from Garret Cartridges and we discussed more hunting. Ashley is the guy we hunt pigs with on his TX hunting lease, when we can. It doesn't look like we will get to go this spring or summer, but perhaps our fall schedules will open up.

I chatted with the two Nates at Nate Squared Tactical (N8²), makers of comfortable inside the pants holsters <https://www.n82tactical.com>. Nate Johnson showed me their new holster model, which is not only comfortable, but also has retention features, a rare thing for an inside the pants holster. I asked him how it worked and he showed me. The picture shows Nate trying to pull a dummy gun out of the holster, but it simply would not let go until he gave the gun a slight twist and it popped free.

Nate gave me a holster to try out, so I will teach with it for a good shakedown one of these days. I did wear it driving home from Las Vegas and found it by far the most comfortable inside the waistband holster I have ever worn. You can see



a picture of it in my lead article.

I spoke briefly with COR-BON Ammunition President Peter Pi, who is a Network corporate sponsor as he was literally rushing off to a meeting. Instead, I sat down and talked with Michael Shovel, National Sales Manager for COR-BON. 23 years ago, when I was a distributor for COR-BON, I attended SHOT Show as a company representative. At that time, I never dreamed I would be doing what I am doing now!

Thursday night, the TV show I appear on, *The Best Defense*, won a Golden Moose Award for best Shooting Show on the Outdoor Channel. This is a big deal at The Outdoor Channel, and is the culmination of seven years of hard work raising the quality of the show each season. I would have loved to have been there, but already had

a dinner meeting planned. I will plan on going next year, though, just in case! Shown to the left is an Outdoor Channel autograph event with Michael Bane, Michael Janich and me, which was held on Thursday, prior to the awards.

All the visiting was fun, but the real highlight of my SHOT Show week was chairing my first official Network Advisory Board meeting. We brought together all the Advisory Board members except for

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one, who was nursing a sick significant other and could not make it.

Imagine sitting in the boardroom with a group of people who together, represent over 250 YEARS of collective experience in the firearms/law enforcement/use of force/legal issues fields! We had many spirited discussions about a number of aspects of Network operations, while sharing stories from the legal profession, law enforcement and firearms training.

Readers who have not yet joined the Network need to understand the extraordinary power our Advisory Board's (See <http://armedcitizensnetwork.org/defense-fund/advisory-board>) expertise and experience bring to

the team on which members can call for legal defense help after a self-defense incident. With so many aftermath plans and programs now available, we believe our advisory board sets us far above the competition.

In closing, I am looking forward to representing the Network in Memphis at the RangeMaster Tactical Conference in a couple of weeks, and seeing all the Network members who go to the conference yearly.

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Attorney Question of the Month

In August, Ferguson MO police officer Darren Wilson used deadly force in self defense against a larger, aggressive male he thought was going to kill him. The case was submitted to a St. Louis County, MO grand jury for a review of the evidence and after hearing testimony from Wilson along with the other evidence, that grand jury refused to indict Wilson for any crimes. This spurred questions about grand jury procedures, so we asked our Affiliated Attorneys the following question:

It is the Network's position that except for giving the facts of the crime committed against them, members should not give a formal statement to police until legal representation is present. Following this line of thought, if called before a grand jury, should a client refuse to testify and likely be indicted or testify and hope for a no true bill? Why?

We published the first half of the many responses received last month. We conclude it this month.

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Without a doubt officer Wilson did not make any statements to anyone until he had consulted with an attorney. The best advice that can be given to anyone in a situation where they have used a gun, even in self defense, is that they not say anything to anyone until they have consulted with an attorney. I have been practicing law for 31 years, and my brother who is now a criminal court judge, used to be the public defender for the second largest county in Illinois, and when someone asks either of us if they should say anything before they have consulted with an attorney, we tell them "if you said 'I didn't do it,' you've said four words too many."

The Miranda warnings are the best evidence of this philosophy. In them you are warned that "anything you say can and will be used against you." If you think about that statement, what the Miranda warning is saying is that there is absolutely nothing that you say that will help you, and anything you say will be against your interests,

because "anything you say can and will be used against you."

The best thing to do, if you are going to carry a gun, is to have the name and phone number of an attorney of your choice in your wallet (hopefully with a 24 hour number where he or she can be reached - most criminal lawyers have answering services that can reach them after hours), and if you are in a situation, to tell the police very politely that you do not want to say anything without your lawyer present, and say nothing more until your attorney arrives.

This also applied to grand jury appearances. If you get a subpoena, call an attorney, and consult with him or her. In many states your attorney can go into the grand jury room with you to advise you. Do not think you can handle it on your own. I have had to appear before grand juries as a witness on two occasions, and I had an attorney with me both times to advise me, even with my knowledge of the law. To consult with an attorney is not a sign of guilt, it is a sign that you are smart, nothing more.

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So I happened to have both a criminal defense attorney and a prosecutor over to my house for dinner this weekend and the issue of Darren Wilson's testimony at the grand jury came up. Both agreed that it was risky for Wilson, but they also think that the prosecutor might have been doing it for Wilson's benefit. I haven't read the transcript of his testimony to see if he was getting softballs thrown at him, but I would agree that all things being equal, it was risky.

I think that I would save the defendant's testimony for a trial, unless we knew that the prosecutor was sympathetic and only calling the grand jury in order to take the pressure off of him/her to charge. I would hate to lock in the defendant to the final version of his/her

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story so early in the process, and in such an unfriendly setting, when we don't have all the expert's reports in and reviewed, as well as potential good or bad witnesses interviewed.

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Before giving a direct response to this thought-provoking question, I must provide some assumptions I am using to respond. Yes, I am an attorney. I cannot possibly answer any question without complicating it.

First of all, I am assuming that the member involved in this scenario is NOT a member of the law enforcement community. A prosecuting attorney will analyze a self-defense shooting involving a civilian citizen different than they will when a law enforcement officer is involved in a self-defense shooting. Law enforcement personnel will inherently be given a certain "benefit of the doubt." Second, I am working off the assumption that this case occurred in the Great State of Tennessee, where I practice criminal defense law. Third, I am assuming that a self-defense shooting has occurred in response to a criminal episode where the member feared for their life. In the unfortunate event a member is a victim of a crime and no self defense was required, you should cooperate fully with the authorities.

In Tennessee, the grand jury for a particular county is made up of 12 registered voters of that county. The grand jury meets in secret and is a one-sided affair. The citizen-accused has no part in grand jury proceedings. Based on this, the member would not testify before the grand jury in Tennessee. Keep in mind that Darren Wilson was a member of the law enforcement community when he testified. The grand jury hears strictly the law enforcement side of things, or in the case of a direct presentment by another citizen, only the testimony of that particular citizen.

I am of the utmost belief that the member citizen-accused should never give a statement to police when they are accused of a crime or have been involved in a self-defense shooting. You may be saying to yourself, "But I was completely within my rights to defend myself

with deadly force. I feared for my life." You may be exactly right. However, keep in mind that ANYTHING you say can AND WILL be used against you in a court of law. I believe that if you are involved in a self-defense shooting you should not give a statement to police. Everything you say, unless recorded, may be paraphrased, scrutinized, twisted or taken out of context by police. I've seen this happen far too many times.

True Bills are returned in an extraordinary number of cases. This is as true in Tennessee as I am sure it is across the United States. As I recently heard on one of our nation's 24-hour news channels, "A ham sandwich could be indicted by a grand jury." When faced with the question posed, I would say that if a member is called before a grand jury, it is better to exercise your right against self-incrimination and refuse to speak.

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The client should take his attorney with him to grand jury. While counsel cannot accompany his client into the grand jury room, the client, upon being asked a question while before the grand jury, may consult with counsel outside the grand jury room before responding to the question asked.

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You ask if an individual facing indictment should testify before the grand jury. The question is one that cannot be answered in the form asked. Assuming you are involved in a case where the grand jury offered you an opportunity to speak before reaching a decision, you should have already had at least two weeks to discuss the matter with your attorney, and if you decided to go forward—would hopefully have been prepared for what was to come.

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I handled a mercy killing where the main reason my client was not indicted was due to his testimony before the grand jury. I had time to evaluate the offer, and prepare my client and his family. So, the answer is that it can be a great opportunity. But, only expert legal counsel can make that determination with the full cooperation of the client.

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The answer is definitely "it depends." There are cases where a person has chosen to remain silent and not been charged (or convicted). There are cases where a person has chosen to testify before the grand jury, and not been charged. This could be an opportunity to terminate the case without being charged or having a trial, which saves money and avoids emotional trauma.

Some of the considerations include:

- Will the person be a persuasive witness? Can he or she testify credibly without having an attorney present for advice?
- Does the person have a criminal record?
- Are there any harmful facts that will only be discovered if the person testifies? The worst possible outcome is to hand a conviction to the prosecutor by testifying. Can the prosecutor make his case without information from the accused?
- How consistent is the other evidence with the self-defense theory?
- How clearly and accurately does the person remember what happened? People often have trouble remembering and testifying accurately about deadly force incidents.
- Will the grand jury hear enough evidence to consider self defense, without the person testifying? If they only hear the case for murder, without the exonerating circumstances, they will probably charge the person.
- Is the prosecutor the type to pursue a conviction no matter what, or the type who understands that "doing justice" sometimes means not charging the person with a crime?
- Does the jury pool favor the person? What are the prevailing local attitudes toward guns?

- Is the case heavily publicized or politicized? How will that affect things?
- Is the person innocent or guilty? In a self-defense case, was the person justified in using force or deadly force?

This is a judgment call that should be made with the help of an experienced defense attorney.

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While this is a great question, it's not one easily answerable. First of all, not all states use the grand jury system (England abolished it years ago), and each state's grand jury rules are not uniform. Federal grand jury practice, while uniform, is decidedly anti-suspect and so absent compelling evidence to corroborate your client's testimony, is generally never a great idea. So, there is no "one size fits all" answer here.

In NY—where I practice—for example, I have routinely put clients into the grand jury when their testimony clearly established "self defense" or in legal terms "justification." But, in NY I can go into the grand jury with my client, albeit not as an advocate. But, if my client has a question, we're allowed to step into the hallway to discuss it if necessary.

Clients should never give a statement to the police prior to speaking with an attorney, period. It's just that simple. Even if it is video-recorded, when they start the recording is up to them and it also assumes that what is being said is audible. The only thing one should say is, "Sir (Ma'am), I want to speak to a lawyer." The worst is that you'll spend a night in jail versus decades in jail.

If your client is a cop, cops generally have more "rights" than the average citizen—most police union contracts include a clause that they cannot be interviewed by internal affairs or detectives until the union rep is present and s/he's unlikely to be "present" until the union attorney is available. I'm not saying that's right, but if that's an option for your client, even more reason not to voluntarily make a statement.

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"If called before a grand jury," is the first issue to be addressed. It is extremely rare for the target of a grand jury to be called before the grand jury and given the opportunity to testify. I believe political pressure was the underlying reason why Officer Wilson was given such a rare opportunity.

Should a client refuse to testify? This clearly is a judgment call for his attorney to make. Remember that the attorney does not have the right to be present in the grand jury room. Any advice on how to answer the question would require the witness to be given permission to leave and consult with counsel on a question by question basis. This can be very time

consuming, but very valuable for the attorney. It would clearly depend on the extent and nature of the statements given by the client before he ever sat in the witness chair and his attorney's ability to get access to them as well as the other evidence so as to avoid the perjury trap.

"Likely be indicted or testify and hope for a no true bill?" Hope is never a valid legal strategy.

As a criminal defense attorney, I would appreciate the opportunity to convince the prosecutor not to charge my client in the first place, but sending a client into the lion's den is often a losing proposition. This one [Ferguson] happened to turn out differently.

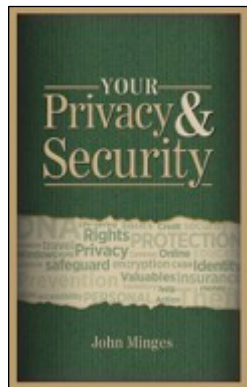
A big "Thank you!" to each Network affiliated attorney who responded to this question. Please return next month when we ask our Affiliated Attorneys a new question.

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

Book Review

Your Privacy & Security

By John Mingos
 \$11.95 Suggested Retail
 275 pages, paper back
 ISBN 978-1502483997



The Network is full of talented people, and many are so modest that we never become aware of their expertise. That was one reason I was so pleased when member John Mingos shared copies of his book, *Your Privacy & Security*, with us last month. While most Network members are prepared to counter physical threats, a good primer on personal security and its related concern of protecting personal privacy is an essential facet in “failing” the victim selection process a criminal uses to choose victims.

By way of introduction, Mingos writes that he expects some of the privacy threats he will outline to surprise the reader, but adds that his goal is to also provide solutions “to help the average person be proactive rather than only reactive when it comes to your privacy and security.”

He adds that it is not his intent to motivate through fear, but rather that the “factual information” outlined will encourage the reader to take responsibility for safety and security and make awareness and preparation a way of life. Throughout the chapters dealing with various invasive government and criminal forays into our privacy, Mingos urges alertness to a wide variety of threats.

On the topic of government intrusions, Mingos suggests that privacy is stolen from babies at birth, with DNA scans and records storing the very genetic code of the individual born under normal medical care. Large data storage facilities, he charges, take tremendous liberties with individual data gathered, whether by the Department of Homeland Security or private enterprise selling information like financial data or energy consumption to which they have no right.

Mingos introduces protective steps by explaining that so long as the individual uses a phone, credit card, the Internet and other services, opting out is not entirely realistic. Instead, limit details you provide business and government to the bare minimum, learn how best to use the consumer credit reporting companies and determine if you should institute a “security freeze” to restrict lender

access to your information permanently (obviously not a great idea if you may need to apply for credit, he advises). He also identifies the largest data brokers and explains how to request a freeze on sharing any data they have about you, adding that they are under no legal obligation to comply. He recommends services that actually respect privacy, including search engines, and other usual data mining suspects. Outside the Internet, other intrusions come from store shopper loyalty cards, phone solicitors and offers from strangers who mean you no good. He advises a low-profile personal life style without asking his readers to abandon modern conveniences.

Discussing home security, the author starts with safe property selection for home buyers, highlighting a number of potential hazards the seller is never going to suggest you consider. The list of environmental hazards to guard against is interesting, and he even suggests asking if fracking has been done in the region, whether the property is close to rail lines or highways over which hazardous materials are transported, how to test for radon gas and other dangers.

Mingos gives a good introduction to home insurance as well as techniques to secure your home and belongings against theft, explaining how most home burglaries are committed and explaining what a security system can do and cannot do and how to get the most out of an alarm system and service. “You need to realize that you and you alone are responsible for your personal security. You cannot and should not count on someone else coming to your rescue, as much as you would like to think this might happen. It is a simple fact that law enforcement cannot be everywhere at one time, and criminals know more than most what the response time might be if an alarm is activated,” he accounts.

Mingos' recommendation to shore up your home's exterior doors with the added protection of an ultra-secure storm door is a good example of the kinds of advice he offers in *Your Privacy & Security*. Mail box security, fencing, lighting, driveways, garages, wireless remote openers, and other security considerations are outlined, as well as suggestions about securing less obvious weak points in the home's perimeter. While most of our readers recognize a safe's value in keeping guns safe from theft, the author also explains limitations on fire protection and various levels of moisture protection available in the higher end safes.

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Home safety includes knowing how to reduce domino effect troubles stemming from natural disasters, Minges suggests. Do you know how to cut off your home's electricity, telecommunications, gas and water, he asks? Recommendations include what could be called an emergency-cutoff multi tool, and while Minges stresses early in *Your Privacy & Security* that by recommending commercial products he isn't necessarily endorsing them, the citations to various product's websites give the reader a good starting point in filling in gaps in their security and safety plans by showing where some of the solutions can be found.

Your Privacy & Security also addresses risks and hazards common to vacation travel, starting with keeping your absence from home secret, hotel safety, considerations for overseas travelers and more. This is a lot more in depth than remembering to cancel the newspaper delivery, in fact, he points out that in cancelling newspaper delivery you've let about half a dozen people know that your home is likely going to be empty for the designated period of time. Ask the neighbors to bring in the papers, pick up leaflets the solicitors leave, and maybe even move a thing or two around to mimic an occupied home.

In wrapping up *Your Privacy & Security*, Minges summarizes the basic human needs of air, water, food and shelter, using each as the subhead for several paragraphs that discuss how much is needed and giving ideas on how to be sure you have what you need if "the lights go out." Despite the popular hype given to the concept of bugging out, he favors hunkering down in your familiar environment over running away whenever

practical.* He goes on to outline considerations ranging from sanitation to medical needs, as well as mentioning when leaving the disaster area may be actually necessary and concerns related to bugging out that will need to be addressed.

Closing with a reminder of a theme that is woven through the book, Minges points out that with over 40% of the United States residents dependent on government assistance, there are simply not enough resources left to take care of everyone in a full-scale disaster. You have got to be able to assure your own survival, he urges.

Unlike so much of the literature that we read, *Your Privacy & Security* is not a firearms and self-defense book. As such, it is able to raise an extremely wide array of concerns and suggest a lot of measures to shore up our privacy and provide the security to avoid needing self defense at all. It is full of good reminders, new ideas, and it is well worth the time to read and follow up on research citations that he includes.

**On a related topic, I recently read a blog post by another Network member discussing sheltering in place. It dovetails very well with John Minges' observations, and together should help us all plan and make better preparations to get through natural disasters, civil disturbances and other dangers. See <http://www.itsadisaster.net/enews201501.html#spotlight>*

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



News from Our Affiliates

Compiled by Gila Hayes

This month's Networking column starts with news about one of our affiliated attorneys, instead of our usual news and updates about instructors and gun shops who introduce their clients to the Network. This topic started a week ago when one of our members asked if I had viewed any of Andrew Branca's online training, based on his popular book *The Law of Self-Defense*. I was pleased to learn of the member's good experience not only because I have long been a big fan of Andrew's work, but because Andrew is also one of our valued Network Affiliated Attorneys.

First, though, for members who have not yet heard about Andrew Branca's contributions to armed citizenry's legal education, Andrew has been practicing law for 30 years, and about 20 years ago, he published a small, red-covered book called *The Law of Self Defense*. It was great, but went out of print and amusingly, I was once offered hundreds of dollars for my copy, but I declined because the title was out of print at the time and I did not want to lose my copy.

Andrew is a guest instructor and content matter expert on self defense law at the SigSauer Academy in Epping, NH, and travels nationwide to present his popular seminars entitled *The Law of Self Defense*. In addition, he is frequently a featured speaker at gun law symposia around the country including the NRA Annual Meeting in 2014, and provides legal expertise for print and broadcast media. He is "one of us," a shooter who began competing in small-bore rifle as a youth, and is currently a Master-class competitor in the International Defensive Pistol Association. He is an NRA-certified firearms instructor in pistol, rifle, and personal protection.

A good place to get started with his online courses is <http://www.lawofselfdefense.com/get-online-course.html> where you get the first half hour at no obligation, and then can opt to purchase the course for your state. Andrew has offered a 20% discount exclusively to Network members, so refer back to this month's member email announcement for the code (since this journal is open to the public). In addition, online training purchased with that coupon code receives 90 days of access to the training instead of the usual 60. Finally,

THE LAW OF SELFDEFENSE

Andrew is expanding his state-specific courses as time allows, so if your state is not yet the topic of one of his programs, go to <http://www.lawofselfdefense.com> and tell him which state you need so he can get to work on it.

Now back to our regular programming—

Network members are familiar with the name of Massad Ayoob, prolific author and master instructor. Network affiliated instructors and rank and file Network members are eligible for a \$100 discount on the Massad Ayoob Group's *Use of Deadly Force Instructor* class July 27-31, 2015 in Western Washington. (See <http://firearmsacademy.com/guest-instructors/109-udfi>) Although intended to teach and certify self-defense firearms instructors in the complicated and nuanced discipline of teaching the legalities of use of deadly force in self defense, the detailed instruction is also suitable for private citizens who are dedicated to furthering their knowledge of use of force for self defense.

Topics include justifying use of deadly force in self defense, use of non-lethal force in self defense, understanding the affirmative defense of self defense, physiological phenomenon involved in deadly force incidents, criminal law and self defense, dynamics of violent encounters, mock courtroom exercise, issues from actual self-defense cases (case studies) and giving a classroom presentation to hone presentation skills.

Nathan Fater at the Wiebke Fur & Trading Company in LaCrosse, WI recently asked for more copies of our educational booklet *What Every Gun Owner Needs to Know About Self-Defense Law*. "The books have gone over great with our customers," he enthused. I found the website of this family-owned business fascinating! They buy furs, hides, morel mushrooms and more. On the retail side, the firm does a brisk trade selling new and used guns, gun safes, optics, ammo and providing a gunsmith's services, too. Learn more at <http://www.wiebketrading.com>.

Network Member Ray S. in Evergreen, CO got in touch with us about getting Network materials to give to those in attendance when the Evergreen Tea Party hosts its Second Amendment Night. The event is coming up soon, February 9th, with David Kopel, celebrated gun rights author, the featured speaker. See more details at <http://www.evergreenteaparty.com/home/>.

Our Affiliated Instructor Rolf Penzel at One Defense in Minneapolis, MN announced that in addition to his regular Defensive Handgun, Defensive Rifle and

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Defensive Shotgun classes, he is hosting John Farnam as a guest instructor, offering Tactical Treatment of Gunshot Wounds on July 17th and Scenario based Force-On-Force using Air Soft guns on July 18-19, 2015. Check out his courses at <http://www.onedefense.net/courses/upcoming-courses/>

Training with John and Vicki Farnam in person is an opportunity not to be missed—and they make it easy for you to hook up with them by traveling all around the country teaching classes. Scanning their 2015 schedule at <http://defense-training.com/dti/2015-schedule/> shows course offerings FL, TN, GA, TX, WA, OK, NJ, IN, MI, PA, CO, UT and WY—and that is only for the first half of the year! You get the idea! Check out their website and don't wait too long to get into one of their classes. You will not regret it!

Steve Eichelberger, our affiliated instructor in Oregon has segmented his fundamentals-to-fighting skills coursework into thirds for students who want to take one or all on Sunday, March 1. His calendar at <http://www.firearmsinstructor.us/Home.php> is a good starting place for students of the gun in the Springfield, Albany and Bend, Oregon area.

In mid-March, don't miss the chance to train with Chuck Taylor when he teaches his Special Urban & Home Defense Handgun Course. "This is the perfect course for the serious student of tactical handgunning and those interested in home defense and urban defensive needs. The course entails how to deal with home invasions, shooting from and around automobiles, improvised shooting positions, shooting in public places, burglary situations, multiple targets, failures to stop, targets at odd angles, small targets and hostage situations," he accounts. The class is in Phoenix, AZ, but Taylor also teaches in other locales, so check his website for details <http://www.chucktayloramericansmallarmsacademy.com/coursedates.html>.

Affiliates, please email me announcements about your programs, classes, open houses and other events coming up in March and April so we can encourage Network members to attend. In addition, if you are getting toward the bottom of your box of our booklets or brochures, please email me a request for more at 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.]*



Editor's Notebook

Understanding Force Options

There is much to be said in favor of honing physical skills and intermediate defenses to complement your firearms skills. Indeed, having only a gun and only shooting skills

for the extremely varied spectrum of self-defense problems is something like trying to perform Beethoven's Ninth symphony with only an oboe.

Still, while possessing various force options is highly beneficial, in our zeal to encourage armed citizens to add non-gun defense methods to their repertoire, we must take care not to set standards and expectations that are too high for the average citizen to meet. As this edition's lead article explains, intermediate defense tools like batons and pepper spray are great for stopping an escalating threat that has not yet reached lethal force, and should be only guardedly relied upon at times when your right to back up the pepper spray, for example, with your carry gun is denied.

Many of our ideas about use of force in self defense devolve from law enforcement practices. Police officers can base their actions on department use of force policies; private citizens cannot. As private armed citizens, we operate largely without a codified standard upon which to fall back to explain why our use of force was objectively reasonable. Absence of a formal use of force policy for private citizens is not so bad in that it provides freedom to pursue the best survival options at the moment of the attack.

Allowing broad defense options to private citizens is vital, because unlike police forces where physical fitness standards can and are imposed, it is the frail senior citizen who most needs deadly force to avoid being killed or crippled by a strong, young predator. In that example, the thug's physical force is indeed potentially lethal to the frailer victim, and use of a gun to counter it is appropriate. It is ridiculous to suggest that the intended victim try to fend off a physical attack with merely his or her empty hands.

However, as we operate without a private citizen use of force policy, misunderstandings inevitably arise, especially about application of intermediate force in self defense. Does carrying pepper spray, a mini-baton or other intermediate defense tools require fighting back with that intermediate force option before "going to guns?" Of course not, even law enforcement in moving away from terms like "force continuum" in favor of terms like "use of force model," acknowledges that when attacked one need not try to resolve the situation with lower levels of force than the aggressor threatens.

A parallel misunderstanding arises when effectiveness of physical defense tactics is overestimated and citizens are told they should try to fight off younger, stronger aggressors instead of using a gun in self defense. Partly to blame is the prejudice against shooting an unarmed attacker—even if the attacker is fully capable and actively trying to injure or kill the armed citizen. This we have seen played out over and over in the courts, to say nothing of the media and resultant public outcry. Few understand or will acknowledge that the shooter was fighting for his very life, not a complicit participant in a school-yard fist fight with a bloody nose or black eye about the worst damage likely.

Our battle to influence public opinion is far from over. How easily death or permanent injury can be inflicted by brawn, fists and feet needs to penetrate the consciousness of anyone who may ever be called to jury duty. Among the Network's several educational projects in various states of completion is a study of the dangers from an ostensibly unarmed assailant. The subject is serious enough that I want to cover all the bases from the medical aspects to legal justifications before putting anything into print.

It is encouraging when, in the middle of a challenging task like this one, someone else speaks up and says, "I'm worried about this, too! What can be done?" That happened on the topic of unarmed attackers last week when one of our members emailed a question about what was being done to correct misunderstandings about the lethality of physical force and later generously agreed to share his expertise as an emergency room physician of nearly two decades experience. Having

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struggled to get this project on its feet for several months, upon receiving his offer of assistance, I felt like I had won the lottery!

The use of physical force series is only one of the projects presently on my desk. In addition, we are undertaking a targeted advertising campaign in both print and radio to reach more armed citizens with the Network's aftermath solutions.

With an increasingly high public profile, we at the Network happily shoulder the task of continuing to attract well-educated armed citizens to our membership. Concurrent with that challenge comes improving understanding of use of force issues ranging from "when, how and why" to articulating those factors for police, prosecutors and the courts. It is also an interesting challenge and one we undertake with relish.

*[End of February 2015 eJournal.
Please return for our March edition.]*

About the Network's Online Journal

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

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

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

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

The Armed Citizens' Legal Defense Network, Inc. receives its direction from these corporate officers:
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We welcome your questions and comments about the Network.
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