



Attorney's Book Outlines Aftermath Issues

An Interview with James Fleming

Interview by Gila Hayes

When armed citizens get into discussions about using force in self defense, it often exposes the depth of misunderstanding common to laypersons that cannot help but base expectations on popular culture and entertainment. Predictably, unpleasant revelations await one sucked into the maelstrom of the criminal justice system. Understanding how attorneys and the legal system work goes far to prevent disastrous surprises.

We recently asked Network Advisory Board member James B. Fleming, a trial attorney of more than 30 years experience, and a former law enforcement investigator, to identify common misunderstandings. What, we asked, are key problem areas? His answers are detailed and full of colorful illustrations, so we switch now to Q & A format to retain the flavor of the interview.

eJournal: Jim, I'm aware that you've just finished writing a book, *Aftermath: Lessons in Self-Defense*. That makes it a good time to ask you about what armed citizens should expect to encounter in the criminal justice system after using force in self defense. You've told me repeatedly that a number of nasty surprises await the unprepared, so perhaps today we could demystify the top three or four. Where should we start?

Fleming: First, the idea that you are going to have a conversation with the police and that everything is going to be OK could not be more inaccurate.

eJournal: OK, so to start with interaction with police. We're programmed to expect the Miranda warning but also to expect responding officers to ask what happened. How do those two realities work together and what are the pitfalls?

Fleming: Well, suppose the client has said, "I will not answer any questions or give any statements until my attorney is present." Particularly after the last two years

of Supreme Court decisions, you have to SAY it: it has to be verbal. If you don't, then anything you say, any facial expression, any body language, any gesture can be used against you.

In *Salinas v. Kansas*, the cops investigating a drive by shooting where two people were killed are confronted with a guy that is not saying anything to them. One cop finally says something to the effect, "Have you asked God to forgive you for gunning down those two people?" See, the guy hasn't said a word to them, but he is

looking at the cop and all of a sudden a single tear trickles down his cheek. The cop gets to testify to that in front of the jury; the jury convicts the guy in 17 minutes. End of story.

Of course, everybody went crazy and said, "You can't do that! What about *Miranda*?" Nobody—the courts, the cops, the prosecutors—has liked *Miranda* since *Miranda* was handed down because so very few people have actually spent time sitting down and looking at what *Miranda* really does say and what *Miranda* doesn't say,

and deciding, "OK, then this is how we need to operate within that body of law."

eJournal: In a nutshell, what does *Miranda* really say?

Fleming: If police have you in custody, before they question you, they have to read you your rights. If you say, "I'm not going to give you a statement until my attorney is present," they might continue to question you, but even if they do, after that, nothing that you say [in response to questioning] can be used against you. But, suppose our fellow or lady gives a clear and unequivocal statement, "I will not answer any questions or provide any statements until my attorney is present." So the cops say, "OK, will you please go sit down over there?" Two cops are standing in the middle of the room, one of them looks at the other and says, "I don't know about you, but self defense? This is bullshit. This guy got

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executed." They are not talking to her, but they make sure she hears it.

She comes up out of the chair, yelling, "That's not true!" Well, what is she doing? She is waiving that clear and unequivocal statement of reliance upon her right to remain silent and the next thing you know, she has got diarrhea of the mouth and even if she does her very best to be perfectly honest—because of the issues that she is dealing with, what she is telling them could be miles from the truth and she wouldn't even know it.

eJournal: Isn't it commonly accepted that police who are involved in a shooting should insist on a 48- to 72-hour delay after the incident before making a formal statement to investigators?

Fleming: Well, the 72 hours is coming right from the International Association of Chiefs of Police. I am emphasizing more than I ever have before, in the immediate aftermath of the incident, you may think you are in a good position to talk to the police, but you are not. In writing the chapter of my book *Aftermath*, on the physiological, psychological and emotional issues that arise out of the high stress incident, I have been working with Alexis Artwohl, Ph.D. who for 18 years has worked as a critical incident forensic counselor where she sits down with cops that have been involved in shootings, debriefs and counsels them.

She refers anecdotally to officers in the immediate aftermath of the incident who haven't got a clue what just happened, or their vision, memory, their perceptions of time and distance and actions are so horribly distorted they're nowhere near accurate. They are not trying to make up a story, but what you are hearing from them in the immediate aftermath is pure garbage because of the tachycardia. This is something that is totally beyond the individual's ability to control.

In the course of writing *Aftermath*, I spent time talking with a lot of cops, including those at the LEOSA annual training my wife, Lynne, and I teach. I asked them, if all you give after a shooting is your name and ID, do you think the first responders are going to think you are guilty of something? Their answer was, "What the hell do I care? These are not the people that make the decisions. They are the people that write the reports."

The decisions are made by prosecutors who make the determination whether or not they are going to charge or if they are going to present to a grand jury and let the grand jury make the decision.

eJournal: If charging decisions are solely in the hands of the district attorney or prosecuting agency, can the defense attorney influence a prosecutor's decision? If you are my attorney, what can you do on my behalf?

Fleming: This is the scary part. There may be something that I can do or there may not be anything that I can do. You may be dealing with a county attorney or a district attorney that has announced a philosophy that, "Nobody is going to take the law into their own hands in this county!" That means that they will charge. You are going to go to court or they are going to present it to the grand jury.

In MN I had one of the most righteous self-defense shoots I had ever seen. A guy was sitting at home after just getting back from picking up groceries. All of a sudden, he hears tremendous crashing and pounding downstairs. He arms himself and goes down the stairs. He is about half way down the stairs when he sees this guy smashing through the front door of his house, literally kicking the front door to kindling. My client has never seen him before and the guy does not say a word. My client is 5' 6" and maybe weighs 125 pounds. The guy that comes through his door is about 6' 4" and weighs about 300 pounds, as we find out later. My client points the 9mm at him, says, "I'm armed, get out of my house or I'll shoot you." The guy charges and attacks him.

Now, my client had not gone through any kind of training whatsoever; he was totally unprepared. The guy literally chases him through the house, catching him, beating on him, my guy getting away from him until he finally runs out on to his rear deck. When the guy comes through the door, he shoots him once and hits him low in the abdomen on the left side with one 9mm full metal jacket—not even a hollow point. Luckily it was enough to dissuade the guy, who all of a sudden realizes, "Oh, I've been shot." He goes out and sits down underneath a tree holding his stomach, begging anybody who happened by to call the police.

My guy called the police. He gets charged with aggravated second-degree assault with a deadly weapon. Minnesota's statute that authorizes use of deadly force says you can use deadly force if you believe that you or another is in imminent danger of death or grave bodily harm. We refer to that as crippling injury because people get all caught up with what does "great bodily harm" mean. Well, the side of your face fractured, arm broken, leg broken, eye put out, nose

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smashed, all of these could be potentially fatal, so the law says you can use deadly force if you have a reasonable belief that is what is coming at you.

You also have what's known as the right to use deadly force "in defense of dwelling." You can use deadly force to prevent the commission of a felony inside your place of abode. Legislators just can't help themselves: they have to use words that make no sense to anybody else. Your place of abode could mean your travel trailer, your home, where you are living at the time that this incident takes place, it even could be a tent in your back yard.

So I go to the prosecutor and because I've known the prosecutor for 22 years and I say, "What the hell are you doing? Why are you charging this guy with second-degree aggravated assault?"

He says, "Well, we have a policy: you use a weapon in this county, we are going to charge you."

I said, "What did you expect him to do?"

He said, "He could have left the house."

I said, "You know as well as I do that the Castle Doctrine applies here."

He said, "I don't want to quibble about semantics with you. Can we talk about a plea?"

I said, "No, we can talk about a jury trial, because you don't get to make that kind of a decision; you don't get to take that authority away from the state legislature. I don't care who you think you are. We are going to trial. Plus, I'm going to call every newspaper and every TV station and every radio station." Now, I didn't really call the media, but I wanted him to think that I would. They came back and agreed to dismiss the charge of second-degree aggravated assault.

eJournal: Was that the end of it?

Fleming: He had a criminal record because 15 years ago he and his friends decided it would be cute to take a snowmobile parked outside a bar up in the Minnesota North Country. Any Minnesotan that reads this will recognize the type of prank. Well, they went through the ice and the snowmobile went to the bottom of a lake. They were charged with theft of a motor vehicle and in MN theft of a motor vehicle is a crime of violence.

eJournal: So he was prohibited from possessing firearms.

Fleming: There was nothing we could do; they had him cold on that. The plea negotiation was that he agreed to receive a sentence of 90 days in jail. A felon in possession in MN normally is a mandatory five years in prison. He got 90 days, which became 60 days because they automatically lop off a third for what they called good time credit, plus with some other jail credit, so I think the grand total he served was 37 days.

eJournal: That's a good example of working with the prosecuting agency to reach a reasonable outcome. What might have happened if you'd had to fight that second-degree aggravated assault charge at trial? You've said many times that lay persons rarely understand what the defense attorney can and cannot introduce in court to show the client's innocence. What are some of the impediments you have been warning us about?

Fleming: The biggest impediment would be rules of evidence. Every criminal trial across the country whether on a federal or state level, whether that is in CA, NV, MN or NY, all those trials are conducted pursuant to the rules of evidence. There may be slight differences from state to state, but they are pretty much uniform across the country. The rules are there for a reason, but the lay person that hasn't bounced up against them before will say, "Well, we get to bring in this!" Well, no you don't.

For example, you've got a professional football quarterback accused of sexual assault. He wants to bring in the fact that the alleged victim has been willing to share her favors indiscriminately with a number of different football quarterbacks, so he says, "Well, this is going to straighten things out!" No, because the rules of evidence say it is not admissible.

eJournal: Or for a self-defense incident, we might want to highlight prior bad acts if we had to shoot someone with a history of assault.

Fleming: You can't use a prior bad act to say, "This was predictable." Rule 404B of the rules of evidence say, no, you can't do that.

Hearsay is another one. People don't understand hearsay. Basically, hearsay is all about the idea that you can't testify that you heard Joe Blow say something about this incident unless Joe Blow is available to come up and testify. Now, that rule says hearsay excludes evidence of statements that are offered to prove the

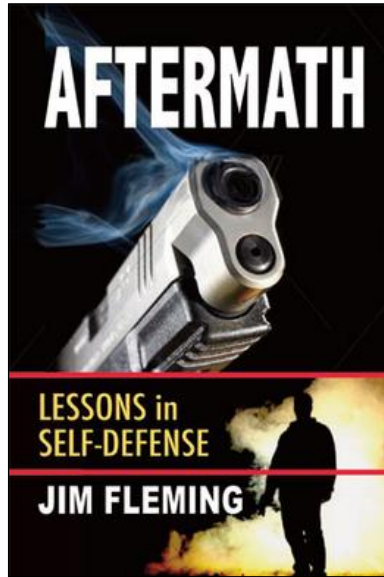
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matter asserted therein where the proponent does not allow the other side to have the opportunity to cross-examine the individual who allegedly made the statement. Lawyers talk like that; it gives other people headaches. [Laughing]

People may say, "Yes, I understand that," but lawyers have to say, "No, you don't, because here are the exceptions to the rule." Literally, what you are doing is threading a needle trying to see if you can get the thread all the way through this labyrinth. You keep running into dead ends, but there might be a side route that you can use. You try to determine, "Is this something that I can get into evidence?"

I want to get across that a trial is the worst-case scenario. If I can get this case resolved without that trial, by coming and presenting all of this stuff to the prosecutor over and over again, and say, "Let's have a cup of coffee. Look, your investigator says that X happened, all right? We have looked at the crime scene. I've brought in an expert who's been doing this for 30 years and my expert says that is impossible. Six months ago your investigator was a patrolman on the sheriff's department; four months ago



he took the test and now he's a detective, but he is not really good at this yet. My expert will show that it wasn't A, it was B, and here is why."

eJournal: What are your odds of prevailing?

Fleming: There is no way to know. People want certainty, but it is not there because all of these cases are so very, very different.

eJournal: That's understandable and it wasn't really a fair question. As you note, there are a lot of variables, too many to cover in one short interview, but you've just written a book that can cover a lot more ground than we can in this short time. How can we get it so we can continue to learn from you?

Fleming: It is *Aftermath: Lessons in Self Defense: What to Expect When the Shooting Stops* due for release in March, 2015. Information on where to purchase the eBook or print copy will be available at my website: AftermathByJimFleming.com.

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Please enjoy the next article.]*



President's Message

by Marty Hayes, J.D.

As I start this month's message, I am sitting at Gate H15 at Chicago's O'Hare International Airport, waiting to board a flight home after attending the 2015 Rangemaster Tactical Conference at the

superb Memphis Police Academy with Network VP Vincent Shuck. I must admit that I attend the conference for purely selfish reasons, as by doing so, I usually get a full re-charge on the old enthusiasm batteries. This year was no exception and I am pretty excited about the future of the Network after speaking to so many of our serious members here at the conference.

BREAKING NEWS!!! I see my bags loading onto the plane! That is always a good sign. Rushing to board—be back soon. Okay, after that 16-hour break, I am back and ready to complete this column. This will be a complete experience write-up, so pardon the length, but there simply is too much to comment on about the Rangemaster Tactical Conference to make it a one pager.

I first introduced the concept of the Network at this very event in 2008. At that time we had no members, no money in the Legal Defense Fund, and no track record of helping our members. Compare then to now: we have 8700 members, nearly a half a million dollars in the Legal Defense Fund, and we have paid attorney fees for 11 of our members after incidents. In 2008, we were just starting filming our first member education DVDs. Talk about a fish out of water when I produced, directed and was the on-screen talent for those first three DVD lectures. Now I feel like an old pro, having produced eight of them and appearing on The Best Defense show for the past four years.

This year, I traveled to Memphis with two guns and three knives. The two guns were my Para 1911 with Crimson Trace laser grips,

and a new Smith and Wesson Model 340 .357, tuned by Denny Reichard at Sand Burr Gun Ranch. The guns worked flawlessly.

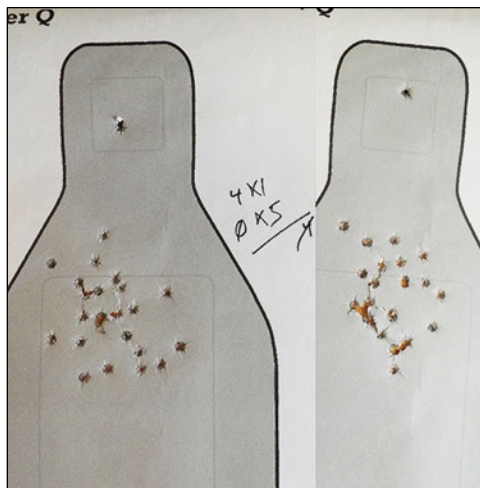
For those wondering about flying with guns, it really is no big deal. Here is a picture of the gun case, guns and knives ready to be closed, locked and placed in a larger travel suitcase, which is then also locked, all with TSA compliant locks. The ammunition goes in factory boxes separate from the guns. Guns are declared at check-in, fill out a form, and follow the instructions of the ticket agent and TSA screener. It's that simple.



Weather when our flight touched down was pretty horrid (at least for Memphis). We arrived to freezing rain and snow, and that pretty much remained the norm for the duration of our three-day visit. That meant lots of

indoor training. That was the good news. The bad news is that at least one outdoor training track was cancelled due to downpours of very cold rain. There were multiple training sessions going on simultaneously, so there was no shortage of things to do. And of course, there was the shooting match, where we got to pit our skills at shooting (and at shooting matches) against the other participants and trainers in attendance. The match is voluntary and I know that many people were busy taking or teaching classes, so not all participated.

So Marty, how did you do at the match? The answer is that I shot well enough that I should have placed in the top 10, but I didn't place in the top 10 or even in the top 20! Why? Well, I had a software glitch. I had not shot on Rangemaster's new training target before, and if you will look closely at the picture you will see a faint outline of the center-scoring rectangle. Look again and you will see my shot groups with a BUNCH of shots just a little high.



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I have absolutely no excuse, because I saw the targets before I shot the match, but I did not equate what I saw (to shoot into the center chest) with my programmed response of where I normally shoot (to the high chest). So, I sadly came in much lower in the final standings than I could have, if I had just paid a little more attention to detail. So be it. I was excited to see my friend Lynn Givens' very high placement in the rankings. She came in third overall, out of 136 shooters, which is awesome and well deserving of a little praise. She is, of course, wife of Tom Givens, the organizer of the event, but had no advantage because of that, because all the scoring was a straight "points down plus time," type of scoring, with the tactical exercise going unscored this year (as I think it should be).



disappointed. I was fascinated by psychologist William April's discussion of the five Ws of risk. It was great content and William is also a great lecturer. (Top photo, left.)

Thanks for a good skills competition, Tom. I took my targets home, and am going to put them up in my garage above my loading bench. Maybe I will figure out where to aim by the time next year rolls around. That's enough about me! This article is about the conference and what it meant to the participants and to the Network.



became acquainted back in the early days of the Internet and chat rooms, but we had never met in person. It was absolutely great to be able to attend a condensed version of his daylong seminar. I was so impressed with his depth of knowledge on this topic that I want to get to his whole course one of these days. Network members would also be well served by attending the course, learn more at <http://lawofselfdefense.com>.

I was gratified to get to meet and talk with all the Network members that took the time to stop me and shake my hand. Out of the 180 or so conference participants, I would estimate at least one-third were Network members. That made it a very friendly environment.

On the afternoon of the second day our Network Vice President Vincent Shuck filmed me giving a new presentation called *Court-Proofing Self-Defense*. This is a presentation that I have been working on for a couple years, and was finally comfortable enough to put it on film. I've condensed the presentation down to an hour, which we intend to release on the Internet for all to see. With the rise of social media and sharing of good information on the Internet, I want to see how sharing some of the Network's educational products can generate more membership. When it is released, we will, of course, let you all know.

The biggest disappointment of attending the conference is also its biggest draw. There was simply too much good training to take in over a short three days and I had to miss many lectures and training blocks I would dearly have liked to attend. But I did get to sit in on several lectures from top trainers in the country. Claude Warner (bottom photo, right) and his training partner Linda Hoopes, put on an excellent two-hour training block about communications with partners during a violent encounter. This is a subject area that I personally wanted to learn more about, and I was not



filmed me giving a new presentation called *Court-Proofing Self-Defense*. This is a presentation that I have been working on for a couple years, and was finally comfortable enough to put it on film. I've condensed the presentation down to an hour, which we intend to release on the Internet for all to see. With the rise of social media and sharing of good information on the Internet, I want to see how sharing some of the Network's educational products can generate more membership. When it is released, we will, of course, let you all know.

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For the trainers, the highlight of the Tactical Conference is a special dinner hosted by Tom and Lynn Givens (shown in the photo to the right). I remember in the early days of the event, the dinner would be held at a local restaurant, with a dozen or so trainers sitting around a big table in a small, intimate gathering. Well, the event has grown now, and at this year's trainers' dinner, I counted about 40 trainers and their spouses. Each year, Tom suggests a topic for discussion, and this year, we talked about how the trainers develop assistant instructors to help teach. It was a fascinating discussion, which turned into a discussion about how to establish standards to which professional instructors should adhere. We didn't make much headway on that topic, but the discussion was nonetheless very engaging.



the target humbled me a little, so I bought another box of .45 and did some more work with it. Then I bought another box, until I finally got the hang of making the target spin on its axis. A great training tool, and frankly, it would make a nice addition to anyone's backyard range. Just be sure to have plenty of down range safe area. As with all steel targets, there is the possibility of ricochet over the target. And, be sure to wear good eye protection while shooting on steel, because there is the slight possibility of fragment bounce back. That was nothing that I worry about, as long as I have good eye protection and a ball cap.

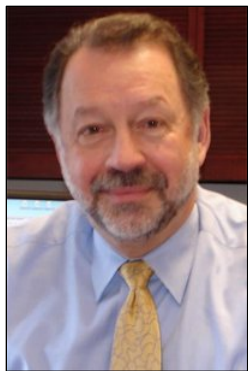
As the conference wound down, the weather got worse again, with a real snow and ice storm threatening on Sunday night. Several of the Tactical Conference participants left for the airport early and I can't blame them. Vincent and I hung around for the final awards presentation and

The rain and snow subsided a little on the morning of the third day, just in time for me to attend a training block by John Farnam and Steve Camp, seen in the photo to the right with John (left) talking about utilizing a rotating target, while Steve (right) looks on. John has been using this target as a training aid for several years. Steve makes the target system. (see <http://www.ravelingroup.com/professionalgear/ar500targets.html>) After a short discussion about how it works, we went outdoors to give it a try. There are several ways to use the metal rotating target and I figured since I had about 20 rounds of ammo left over from the match, I would give it a try. Well, I will admit



enjoyed using the time to talk with many members of the Network, while wrapping up the conference. Interestingly, the really severe weather never materialized, so we had an uneventful trip back to the airport Monday morning. About 16 hours later, I arrived home, enthusiasm fully restored, and with a brain full of new ideas. If you haven't attended a Rangemaster Tactical Conference, I highly recommend it. More info at <http://www.rangemaster.com/tactical-conference/history-of-the-conference/>

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Vice President's Message

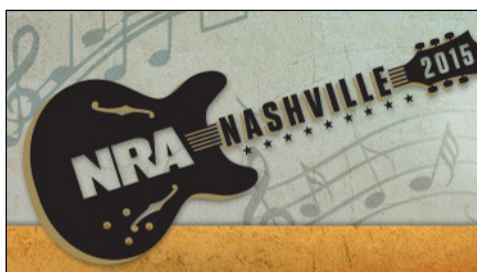
by Vincent Shuck

Each year about this time I offer a suggestion for Network members and others reading this eJournal to meet us at the ensuing NRA Annual Meeting and Exhibits. The 2015 NRA meeting will be

held at the Music City Convention Center in downtown Nashville, TN on April 10 to 12.

With over 550 exhibitors, including the Network, you can spend your time in the exhibit hall exploring the products from every major firearm company in the country, book the hunt of a lifetime in the outfitter section, and view priceless collections of firearms in the gun collector area. You'll also see knives, wildlife art, shooting accessories, hunting gear, ATVs, and much more! Educational seminars, special events and celebrity speakers are on the schedule to break up your walking time in the exhibit hall. Admission to the NRA meeting is free to NRA members and their families.

In addition to the NRA meeting, Nashville offers a wide variety of entertainment options, including the Ryman Auditorium, home of the Grand Ole Opry, the Country Music Hall of Fame, the Hermitage, home of President Andrew Jackson, and the Nashville Ballet, if country music is not your priority. It's also the home of the modern-day empire, known as Music Row, a collection of recording studios, record labels, entertainment offices and other associated music businesses where many of the old and new artists have recorded their melodies as well as managed their business activities.



As noted, the Network will join other exhibitors in the hall. The NRA meeting gives us a chance to interact with current members as well as to bring new members into the fold. It's a great opportunity for Gila, Marty and me to see current members, literally putting a face to a name, and to explain the Network's mission to nonmembers. Our past outings to the NRA have been successful on both counts and we look forward to Nashville. To spice up our booth activities, we will have several nationally-known firearms and self-defense authors signing their

books on a rotational basis. This includes:

- Massad Ayoob
- Andrew Branca
- Grant Cunningham
- Gila Hayes
- Mitch Vilos

If you already have a publication from any of these authors, bring it and have the author sign it! If you need another copy of the same publication or a different publication for yourself or a friend, manage that at our booth, too.

Network members within driving distance of Nashville should attend and those who can make the journey via the airlines will have a practical vindication to use some frequent flyer miles. For more information on the NRA



meeting, pre-registration and assistance with housing or travel, visit www.nraam.org for your meeting attendance needs or questions. Come join us at booth #2455 - and bring a friend!

We hope to see you in Nashville next month.

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Attorney Question of the Month

The question we asked our Network Affiliated Attorneys this month came from a member who wanted more information from state law to determine if pointing a firearm without shooting is considered use of deadly force in the various states. Wanting more than just a “yes” or “no” response, we asked our Affiliated Attorneys the following—

What is the law in your state regarding defensive display of a firearm?

If the gun is not fired, is simply pointing it at an assailant considered deadly force in your state?

What are common charges stemming from pointing a gun at another and what are the defenses for the armed citizen who does so to ward off imminent attack?

It was a rather complex question, so responses tend to be a bit longer than usual. This month we'll present the first half of the attorneys' commentaries, with the second portion slated for publication in the April journal.

John R. Monroe

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In my state (Georgia), pointing a gun is not “using” deadly force, it is threatening to use deadly force. The distinction is important, because you can legally threaten to use deadly force in circumstances where you clearly cannot use deadly force. For example, if you come home and surprise a burglar who is carrying your TV out your front door, you generally cannot shoot him. But you probably can draw a gun and tell him to put down the TV and lie down on the ground or you'll shoot him (you just cannot follow through with your threat). The test is whether you reasonably believe the threat is necessary to prevent the action.

If you wrongfully display a gun, there are two likely charges:

1. Pointing a gun or pistol at another, which is a misdemeanor.

2. Aggravated assault, which is a 20-year felony.

Pointing a gun or pistol at another is very rarely charged, because the only practical difference between the two is that the “victim” is put in apprehension of receiving an immediate injury for aggravated assault. So, for pointing a gun or pistol at another, the “victim” either 1) didn't see you point it or 2) saw it but wasn't afraid.

John Chapman

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What is the law in your state regarding defensive display of a firearm?

The threatened use of deadly force is “the equivalent of non-deadly force.” State v. Williams, http://scholar.google.com/scholar_case?case=3753392866118692916&q=state+v.+williams+equivalent+of+nondeadly+force&hl=en&as_sdt=4,193

If the gun is not fired, is simply pointing it at an assailant considered deadly force in your state?

No, see the same case. “As set forth in section 2(8), ‘deadly **force**’ means ‘physical **force** which a person uses’” (emphasis added). “Physical” is defined in Webster's New International Dictionary (2d ed. 1960) as “of or pertaining to physics; characterized or produced by the forces and operations of physics.” When the word “physical” is used to qualify the word “**force**” to create the requirement of “physical force,” which must be used by one person against another, it is our view that the Legislature contemplated the actual exercise of some form of kinetic energy of such a nature as to create an impending and substantial risk of causing death or bodily harm. This is supported by the plain language of the statute itself, which includes the following illustrative example: “Intentionally or recklessly discharging a firearm in the direction of another person or at a moving vehicle constitutes deadly force.”

What are common charges stemming from pointing a gun at another and what are the defenses for the armed citizen who does so to ward off imminent attack?

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Criminal threatening, terrorizing, reckless conduct with the use of a firearm

<http://www.mainelegislature.org/legis/statutes/17-A/title17-Ach9sec0.html>

Defenses are generally "justification" under chapter 5 of title 17-A:

<http://www.mainelegislature.org/legis/statutes/17-A/title17-Ach5sec0.html>

These typically include: prevention of theft or criminal mischief, recovery of property immediately after same, ejecting a trespasser, prevention of unlawful non-deadly force, effecting an arrest, indeed, anything where non-deadly force is:

- available as a defense, and;
- "reasonable" in degree of force used.

New Hampshire used to have the opposite rule. In 2011, they changed the law by statute (Maine did it by judicial interpretation). NH RSA Chapter 627:9 Definitions...

II. "Deadly force" means any assault or confinement which the actor commits with the purpose of causing or which he knows to create a substantial risk of causing death or serious bodily injury. Purposely firing a firearm capable of causing serious bodily injury or death in the direction of another person or at a vehicle in which another is believed to be constitutes deadly force...

IV. "Non-deadly force" means any assault or confinement which does not constitute deadly force. **The act of producing or displaying a weapon shall constitute non-deadly force.**

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Regarding the three questions posed for this quarter: i.e. What is the law in [South Carolina] regarding defensive display of a firearm? If the gun is not fired, is simply pointing it at an assailant considered deadly force in your state? What are common charges stemming from pointing a gun at another and what are the defenses for the armed citizen who does so to ward off imminent attack?, please see my analysis below.

South Carolina, like all American jurisdictions, follows the principal that something is legal unless a law specifically forbids a particular act, thus there should be a statute that specifically addresses pointing a gun at another person if in fact South Carolina prohibits this act. The code on point is SC Code Ann. 16-23-410, which states "It is unlawful for a person to present or point at another person a loaded or unloaded firearm."

Additionally, the code classifies violation as a felony and leaves sentencing to the discretion of the court but limits imprisonment for violation at five years. Finally, the code states that it cannot abridge the right of self defense nor does it apply to theatrical performances.

Our courts have defined the word "present" to include: taking a gun and waving it in another person's face, see 370 S.C. 31, 36, 633 S.E.2d 898, 900-01 (2006); showing someone a pistol as a means of intimidation and forcing that person to walk towards a pickup truck, see 361 S.C. 372, 381, 605 S.E.2d 522, 526-7 (2004); and waving or showing a gun to someone in a direct and actively aggressive and threatening manner, see 387 S.C. 517 692 S.E.2d 569 (S.C. App. 2010).

So in other words, if you hold a firearm in the presence of another person in a direct, aggressive or threatening manner, the state can charge you with violation of 16-23-410. A totality of the circumstances inquiry will apply, which makes listing all possible scenarios where a violation occurs impossible. That said, consider the following two examples to highlight this point. In both scenarios, Neighbor A gets into an altercation with Neighbor B over Neighbor A's dog trespassing into Neighbor B's yard and Neighbor B verbally threatening to injure the dog.

In scenario 1, Neighbor A gets angry over the argument, retrieves his hunting rifle from his closet, shoulders the weapon, comes back outside and begins yelling over to Neighbor B's residence, challenging Neighbor B to come outside.

In scenario 2, Neighbor A does not retrieve his rifle and the incident concludes. The next day however, Neighbor A steps outside with his pistol in his hand, which he places in his glove box of his car every morning (and at the end of every day, he returns to his bed's mattress). Neighbor B was already outside getting his paper.

Neighbor B sees Neighbor A carrying the pistol, remembers their argument, runs inside and calls the police.

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In scenario 1, it is reasonable to assume Neighbor A acted to threaten Neighbor B. He obviously presented a firearm. It's questionable on our facts whether or not Neighbor A presented the firearm to Neighbor B. Remember, in our facts we assume Neighbor B was in his home but he definitely wasn't outside in scenario 1, but it doesn't matter whether the rifle was unloaded or not, so if police arrived on scene, they could definitely charge Neighbor A with violation of 16-23-410.

In scenario 2, it is reasonable to assume Neighbor A did not act to threaten Neighbor B. In our facts, Neighbor A was acting in his ordinary course of business and not directing anything toward Neighbor B. The most important thing to remember is that even if you are Neighbor A in scenario 2, you never want to get into an argument with police. Arguments are for judges in a controlled environment.

In South Carolina, when a defendant claims the defense of "self defense," the state is required to disprove the elements of self-defense beyond a reasonable doubt, see *State v. Dicky* (S.C. 2011). The elements are 1) the defendant was without fault in bringing on the difficulty; 2) the defendant . . . actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he was actually in such imminent danger; 3) if the defendant actually believed he was in imminent danger, a reasonable prudent man of ordinary firmness and courage would have entertained the same belief; and 4) the defendant had no other means of avoiding the danger than to act as he did.

South Carolina also has the "castle doctrine," which was previously common law and codified into S.C. Code Ann. § 16-11-420(B) (Supp. 2013). It provides:

(A) A person is presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself or another person when using deadly force that is intended or likely to cause death or great bodily injury to another person if the person:

(1) against whom the deadly force is used is in the process of unlawfully and forcefully entering, or has unlawfully and forcibly entered a dwelling, residence, or occupied vehicle, or if he removes or is attempting to remove another person against his will from the dwelling, residence, or occupied vehicle; and

(2) who uses deadly force knows or has reason to believe that an unlawful and forcible entry or unlawful and forcible act is occurring or has occurred.

(B) The presumption provided in subsection (A) does not apply if the person:

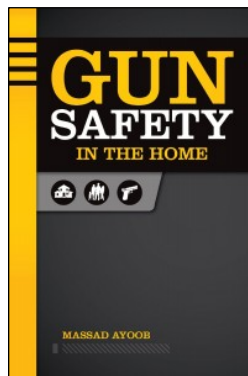
(1) against whom the deadly force is used has the right to be in or is a lawful resident of the dwelling, residence, or occupied vehicle including, but not limited to, an owner, lessee, or titleholder...

(C) A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16-1-60.

Self defense and castle doctrine are by far the most important defenses to keep in mind when trying to ascertain the right course of action. The most important thing to remember is that you should never pull a gun on anyone unless you intend to use it, and you should never need to use a gun unless you reasonably believe you are in imminent and serious danger.

A big "Thank you!" to each Network affiliated attorney who responded to this question. Please return next month for the second half of the responses to this topic.

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



Book Review

Gun Safety in the Home

Author: Massad Ayoob

128 pages, paperback,
illustrated

Published by Gun Digest

ISBN: 9781440239878

\$11.83 at

[http://www.gundigeststore.co](http://www.gundigeststore.com/gun-safety-in-the-home-group?lid=CGgdar020614)

[m/gun-safety-in-the-home-group?lid=CGgdar020614](http://www.gundigeststore.com/gun-safety-in-the-home-group?lid=CGgdar020614)

Reviewed by Gila Hayes

Last spring at the NRA Convention, the Network's booth hosted book signings for our friend and Advisory Board member Massad Ayoob, among several other authors. The book Ayoob signed was *Gun Safety In the Home*, graciously provided by the publisher, Gun Digest Books. When the dust cleared, all that remained were empty book boxes and one damaged copy, which the bindery had mistakenly sliced in half, amputating the right side of the pages, but preserving the binding. "That's your condensed copy," Ayoob joked, "it won't take you long to read it." While his quip might have just been a little joke between two old friends, the truth is that *Gun Safety In the Home* IS a small, condensed lesson in living safely in an armed household.

In this book's condensed presentation is its strength: there are many in the gun-owning community who do not feel driven to spend the days and weeks in training and practice that many of our Network members do. How, then, do we older, more experienced members of armed citizenry mentor and coach these less serious gun owners in gun safety, possibly the single most pivotal factor on which gun rights hinge? This book demonstrates how: We trim out all the superfluous opinion, all the peripheral arguments, all the wishful thinking, and provide a bare-bones instructional manual for living safely with guns. This small and affordable book is that manual.

Ayoob introduces gun safety by noting that applying common sense to firearms is a bit like keeping hands and fingers away from lawnmower and power tool blades and like other power tools, it's necessary to take care to only "puncture and destroy the right things and not the wrong things."

While the industry uses terms like Universal Gun Safety Rules, Ayoob explains that the tremendous variations in mechanical operation present between handguns, rifles and shotguns break down even further into the different operating systems represented in each of those categories. Bravely tackling the subject, he heads this title *Gun-Specific Safety Rules*, to focus the beginner's attention on the fact that acceptable procedures with a modern semi-automatic pistol may not be safe with, for example, a lever action rifle. He teaches the reader safe operation of shotguns, rifles and handguns, including handgun holstering procedures.

Intelligent adults deserve more than a few brusquely worded mandates so Ayoob provides the rationale behind gun safety rules, illustrated both with photographs and by vignettes that underscore why these safety precautions are vital. Sometimes the little word picture gives the history of the problem the rule solves; other times a photograph or several pages of text explains why a particular manual of arms or other operating procedure is essential.

Sometimes a fitting story is told. Toward the latter half of the book Ayoob details a rifle accident that killed a frontier lawman's camp cook, not only to show how accidents can occur when experienced shooters handle deadly weapons, but also to demonstrate the terrible results of allowing the muzzle to stray away from a safe direction. He also explains inertia discharges in showing how accidents can occur, as well as detailing mechanical or design failures, including the once infamous case head separations in "a particular brand of gun which had a barrel that did not fully support the chamber at the bottom of the rear," he writes tactfully. He closes this segment noting that these kinds of catastrophic failures are quite rare, so while they make the headlines, they are in actuality very infrequent in comparison to the innumerable pulls of the trigger that do not end in catastrophe.

More likely is intentional criminal use of a gun to which the shooter should never have had access. Addressing storage of firearms, Ayoob opines that there are two categories. The first he calls "Simple Storage," noting that "the target shooter's pistol, the outdoorsman's revolver, the hunter's rifle or shotgun" will be stored in this manner because none require immediate access in an emergency situation. A good quality safe makes

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sense for "Simple Storage," he explains, because there is no need to quickly put your hands on any of these firearms, but a great necessity to prevent access by "irresponsible youngsters, equally irresponsible adults, and assorted burglars and other evildoers who might break into your home with hostile intent."

The opposite, Ayooob continues, is "Defensive-Ready Storage" for loaded guns that may be required quickly for defense of self, home and family. He discusses biometric lock boxes and so-called Smart Guns, identifying the weak points in both. Listing problems with off body storage, he concludes that a gun carried securely on body is the most efficient method of Defensive-Ready Storage, and backs up the assertion citing several infamous home intrusions resulting in murders of entire families.

Protecting the family means keeping bad guys out, but also keeping children from accessing the gun the adults keep to protect them, Ayooob writes, introducing his third chapter. "Child psychologists tell us that children crave two things they don't yet have: power and responsibility," he explains. In modern culture, he asserts, the gun represents both, so it is understandable that kids will ferret out a gun the parent believes hidden where "no one" will uncover it. The solution, and one Ayooob has long advocated, is "gun proofing" your kids by not making the erroneous assumption that you can prevent your children from ever having access to a firearm. He explains how he managed gun safety as a father, as well as reviewing the NRA's highly successful Eddie Eagle child gun safety program and its history.

Accidental shooting deaths, especially those involving children, fuel many anti-gun campaigns. Ayooob discusses accident prevention measures, opining that simply outlawing a tool or a behavior is ineffective. He outlines the history of the terms "negligent discharge" and "accidental discharge," and tells the stories of legal cases on which he has provided expert testimony to show the importance of not assuming that all gun accidents are caused by negligence.

He asserts that truly accidental shootings are not due to the negligence of the person holding the gun, explaining equipment and other factors that can cause accidents, as well as some of the legal issues in play when an accident must be explained. Trigger pull weight is covered thoroughly, as many of the cases cited occurred when a double action revolver was cocked then discharged in single action. He defines reasonable trigger pull weights for various pistols and the peril of

modifying a trigger so the pressure required to fire the gun is substantially less than the manufacturer designed.

Ayooob explains how an armed citizen who justifiably shoots an assailant may be accused of accidentally firing to undermine the defense of self defense. After all, a charge of manslaughter due to "recklessness and negligence," he explains, is easier to prosecute and win than proving an intentional act of murder. He explains the legal principles at work and how to protect the defense of self defense from allegations that a necessary act of self defense was an accident rooted in carelessness. Issues like trigger pull weight give traction to such allegations, he writes, whether from a prosecutor looking for a conviction of manslaughter or a plaintiff's attorney attempting to get money from a homeowners or automobile insurance policy that will cover an accident but not intentional acts undertaken in self defense.

Other stories illustrate the necessity of securing guns where mentally ill family members cannot access them. Later in the book, he contrasts the carnage wrought by Adam Lanza with his mother's rifle against choices made by a law enforcement officer after the officer's father lost his capacity to reason following a stroke. Ayooob's warning to keep guns secured unless under immediate control is a powerful part of this book. Don't be blinded by wishful thinking that the troubled person has recovered, he urges.

Ayooob closes this little book by relating the facts of an accidental discharge he had during a shooting match some years ago. Explaining the lessons that embarrassing but non-injurious incident taught, he emphasizes the responsibility that falls on the armed citizen. It adds a nice touch of humility and reminds the reader that experts with thousands of hours of experience with firearms can still fall prey to mistakes.

The goal of those truly dedicated to gun safety is not to remove the hazard, his summary outlines, it is to put in place practices that safe and responsible people employ to prevent tragedy. Like the first syllable of the word "firearms," Ayooob writes in his closing summary, a gun is a tool used by man to bring about results of inestimable good, but it can also cause fearsome destruction. "We have these weapons to protect ourselves and the people we most love," he stresses. "We must never forget that they are the ones most likely to be near us...when we handle those guns...We must never drop our guard with them."

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

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News from Our Affiliates

Compiled by Gila Hayes

The Network sees a lot of new members from southern California, and with Orange County granting carry permits to qualified private citizens, long-time police firearms instructor Greg Block was perfectly positioned to make sure the new permit applicants got good training. He teaches a weekly CCW class, in addition to offering a very full selection of beginning, intermediate and advanced pistol, carbine and shotgun classes plus classes in situational tactics, low light shooting, stress-inoculation and scenarios. Students who come to him for the CCW class are just getting started; he can help them fill out other vital defense skill areas, too. Block's Self-Defense Firearms Training is located in Huntington Beach, and he also offers law enforcement programs through his mobile Prism trailer. Learn more at <http://www.firearmstraining.com/index.html>. He also maintains a busy Facebook page at <https://www.facebook.com/SDFT.GregBlock>

Our Corporate Sponsors, Steve and Kate Camp of Ravelin Group (the makers of the excellent Safe Direction ballistic containment products) maintain an interesting blog. A few weeks ago, as many of our members, Advisory Board members as well as our Network President and Vice President were participating in Tom and Lynn Givens' Rangemaster Tactical Conference, Steve blogged about friends old and new that he met at the conference. See <http://ravelingroup.com/wordpress1/blog/> to read his conference report. Thank you, Steve, for your kinds words about the Network!

We usually get Affiliated Instructor Alecs Dean's "Upcoming" emails right after this journal releases this month's events, so it makes no sense to announce classes that will already be taught by the time this journal hits the Internet! His most recent email program announcement, however, notes that in March, Alecs will be teaching Personal Protection Outside The Home Instructor, Shotgun & Rifle Instructor, and Muzzleloading For Student & Instructor. He adds that, "This spring we will have another Women On Target Event." Alecs operates International Firearm Safety, Inc. in Ft. Myers, FL, so if you have been looking for the opportunity to take one of those NRA Instructor courses, or have

friends who would enjoy an NRA Women on Target program, be sure to get in touch with him. His phone number is 239-357-3437 and you can learn more at his website at <http://www.internationalfirearmsafety.com>

While you might think that attorneys are great self-promoters, the fact is that when one of our affiliated attorneys gets a public accolade, these modest men and women rarely remember to let us know. That was the case when, late last month as I was browsing one of my favorite blog sites, David Hardy's *Of Arms and the Law* (you should put <http://armsandthelaw.com> in your favorites file, too) I noticed a name prominent among our California members—Chuck Michel. The California Lawyer's online journal published a nice commentary on his work on *Peruta v. San Diego* (742 F.3d 1144 (9th Cir. 2014)) that morphs into a biographical sketch of this heavy-hitter in CA gun law. The online article at https://www.callawyer.com/clstory.cfm?eid=939363&wteid=939363_California's_Triggerman is full of interesting quotes from Michel, and the reader comes away appreciating the service he has given armed citizens. We are proud to say that Michel & Associates are Network Affiliated Attorneys, and while we hope none of our CA members need the law firm's services, they will be in good hands should the need arise.

Our corporate sponsor, Tod Cole at Recluse Holsters in Gig Harbor, WA asked for more copies of our booklet *What Every Gun Owner Needs to Know About Self-Defense Law* not long ago. He puts a copy in the package with each holster he ships. Recluse Holsters was founded on Tod's super-stealthy one-sided pocket holsters although he now has other pocket holster designs, too. Recluse Holsters has been a good friend to the Network. Members, if you're shopping for a pocket holster for a small framed handgun, don't forget to look at <http://www.recluseholster.com/index.php>

Affiliates, please remember to let me know when you need more copies of the Armed Citizens' Educational Foundation's booklet *What Every Gun Owner Needs to Know About Self-Defense Law* and our tri-fold brochures by emailing me at ghayes@armedcitizensnetwork.org or calling 360-978-5200. At the same time, don't forget to send me an email if you have any special events like open houses, special classes or other interesting tidbits that we can announce for you in this column.

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

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Guest Editorial

Post-Ferguson Interactions With Law Enforcement

by Mike Wood

This past November and December, as most of America was busily preparing for the holidays, our nation's law enforcement officers were hastily preparing to combat large scale urban riots, surging mob violence, and deadly ambush attacks. To them, the season was not a time of Thanksgiving, Peace and Joy, and Goodwill Towards Man.

In the wake of the politically-charged shooting of Michael Brown (a strong-arm robber who assaulted a police officer and tried to kill him with his own gun) many parts of urban America erupted into chaos. Encouraged by race-baiting opportunists, scoundrel politicians, radicals and the media, large crowds of angry people were whipped up into an anti-cop frenzy and officer injuries mounted as the mobs were incited to riot, arson, loot and commit acts of violence against police officers.

Officers across the United States became the targets of hostility and misdirected anger, as well as scapegoats for failed social policies that have left inner-city America a shambles. When they used justifiable force to defend themselves or the public, or to arrest a violent criminal who would not submit, they were immediately accused of overreaction, or worse, murder. Traditional bases of support eroded. They were accused of widespread racism by no less a figure than the Attorney General of the United States, and the President himself described this seething anger towards the police as "understandable."

An escalating pattern of violent attacks on law enforcement reached a crescendo in the ambush-style murders of New York Police Officers Rafael Ramos and Wenjian Liu, but the violence didn't stop there. Another two officers would be murdered before the year was out, bringing the total for November and December alone to eight line-of-duty deaths attributable to assault or gunfire. In some parts of the nation, police officers were even ambushed in their own homes, while off duty.

Suddenly, it seemed like the entire nation was at war with its police.

A Changing Relationship

The majority of Americans still respected their police officers and were supportive of them, but this silent majority wasn't getting any airtime on TV or radio. Amidst a growing wave of anti-police activities and media coverage, many officers around the nation began to feel vulnerable, isolated, and targeted. Many began to openly express the sentiment that "Ferguson changed everything" in their relationship with the public they served.

And indeed it had. It was almost like the nation had gone backwards in time, to the violent and turbulent late 1960s and early 1970s, where the police were under widespread physical and verbal attack from all corners of society, and law enforcement injuries and deaths reached an all-time high. Even the language of that era made a comeback—it had been decades since the derisive term "pig" was popular with those who opposed the police, but the murderer of Officers Ramos and Liu reintroduced it to a new generation of criminals and radicals.

In places far from Ferguson, MO, officers began to feel the backlash of anti-cop sentiment that had never been stronger in the course of their careers. Worse yet was the growing sense of fear and distrust of police amongst average Americans, stoked by a complicit media.

Continued...



Above: Massad Ayoob (right) congratulates our guest columnist, Mike Wood, on a perfect qualification target.

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Officers all over the country reported this subtle change in the public psyche—the people that cops used to count on for support were being fed a message that the police were brutal, racist, violent, and could not be trusted.

As the public became increasingly wary of the police, the gap between them seemed to be widening.

The Police and Armed Citizens

This situation has ramifications for Network members who lawfully keep and carry weapons. The relationship between a police officer and a legally armed citizen centers on trust, but if the general relationship between the public and police is eroding, then this places a great strain on the interaction between armed “good guys” on both sides of the badge. This increased tension could have disastrous results, particularly for citizens who lawfully carry concealed weapons in public, so it's to our benefit to do what we can to reinforce that feeling of trust and mutual respect when we interact with law enforcement as an armed citizen.

To that end, I would suggest the following tips when you encounter a law enforcement officer as an armed citizen:

Be Respectful. This has always been important, but it's especially so now when officers feel like they are under constant verbal assault—from criminals and “average” citizens alike. Being respectful towards an officer will go a long way towards establishing your credibility as someone they can trust;

Be Patient. Officers who prematurely rush into a situation or rush through an encounter can put themselves at great risk. Sometimes they need to move slowly and be methodical, for your safety and theirs. They might have to search and secure an area first before they can respond to your needs, for example. If you are stopped by the police or call on them for help, it's natural that you'll be anxious and want your situation to be resolved quickly, but be patient with them and let them work at their own speed;

Be Helpful. You know that officers want to make safety a priority in every interaction with the public, so help them out. If you're stopped for a driving violation, for instance, park your car in a safe (away from traffic and other hazards) and well lit location

that will reduce the officer's risk of approaching you. Put your interior lighting on, roll down the windows, turn off the motor, stay in your car, and place your hands in view on the steering wheel so that it makes it easier for the officer to see and hear what you are doing. Don't make any fast or unexpected moves, and ask for permission to retrieve objects (a license, your CCW permit, etc.) before you move to get them. If an officer is responding to your home, give the police a description of who will meet them on arrival and turn on the lights (inside and outside) before they get there. Don't meet them at the door with a gun in your hand. You need to be the officer's partner in ensuring that the interaction with them goes smoothly and safely for all involved;

Be Professional. If the law or the situation requires you to identify yourself as a CCW permit holder upon initial contact with law enforcement, then do so. Do it in a calm and professional manner, befitting someone who is entrusted with the responsibility of carrying a weapon. Instead of blurting out, “I've got a gun!” when the officer comes up to your door on a traffic stop, find a way to notify the officer that you are “lawfully carrying a concealed firearm” (not “packing a gun”—word choice is critical here) in a calm and non-threatening manner. Ask the officer what he would like you to do next, and follow his instructions carefully;

Be Understanding. Police work is dangerous and getting more so every day. If you were in their shoes, you would probably be nervous and wary too, so don't be offended if they use precautionary tactics designed to give them the advantage. For example, if an officer stops you while driving in a remote area, don't be offended if he approaches your car with his hand near or on his duty weapon, or communicates with you from a position that is not directly in front of you. Don't be offended if a flashlight is shined in your eyes, or if your lawfully carried concealed weapon is temporarily held by the officer until his contact with you is complete. All of this might seem a little unnecessary to you, but try to understand that it's not personal—it's all about safety. Also, if the officer is a little grumpy or curt or even distant, try to cut him some slack, just like you would your spouse. You never know what he's already had to deal with today;

Continued...

Be Thick-Skinned. You know that you're a "Good Guy," but the officer doesn't. The officer learned a long time ago about the hazards of judging a book by its cover, so don't get upset if you're "being treated like a criminal." You probably *are* being treated like a potential threat, for your safety as well as the officer's. Don't take it personally;

Save it for later. If you run into a rude or unprofessional officer (yes, they are out there), don't argue with him or try to solve the problem right now. Politely comply with his instructions and follow up with a complaint to the appropriate authorities at a later time.

Keeping these tips in mind will help you to repair some of the recent damage to the relationship between the

public and their police, and will also ensure everyone's safety. A simple "Thank You" would also be a nice touch, if you get the chance.

Be safe out there!

Mike Wood is a Network member and the author of [Newhall Shooting: A Tactical Analysis](#). See his website at www.newhallshooting.com for more information.

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

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