



Network's 2013 Continuing Legal Education Schedule Quadruples

We are building on 2012's successes positioning the Network as the go-to authority for legal professionals seeking definitive information about defending self defense use of force. Based on the enthusiastic response to the Network's first *Understanding the Use of Deadly Force in Self Defense* CLE seminars, we've scheduled eight seminars in six states this coming year.

"Experience has taught us that surviving the deadly force encounter is only the first stage of the battle necessary to vindicate the right of every American citizen to defend themselves against the violence that has been visited upon them, suddenly and without prior warning. Helping their legal counsel, as well as their self-defense instructors, law enforcement personnel and prosecutors, to understand the dynamics of the deadly force encounter and the legal process that will follow, aids in assuring that the law abiding citizen forced to take responsibility for their own safety, and the safety of others, will emerge from this very stressful experience without having been victimized by a criminal attacker or by the criminal justice system itself," explains the Network's director of CLE curriculum, James Fleming.

The two-day seminars cover a broad range of topics focused on issues attorneys face when defending self defense. These include the parameters that differentiate unjustifiable use of deadly force from legitimate self defense, technical subjects including firearms, ammunition and ballistics, shooting incident analysis, defending self defense carried out by means other than guns including non-lethal defenses, physiological and psychological phenomena experienced by violence survivors, distortion of witness perceptions and witness dynamics.

Jury selection issues, conducting voir dire, using and impeaching expert witnesses, ethical considerations, using demonstrative evidence, client preparation, closing arguments and presenting the affirmative defense of self defense are also taught. These are just

the high points, and a lot more is covered through discussion, question and answer, lecture and multi-media presentation. Our CLE instructional team of Massad Ayoob, Marty Hayes and James Fleming has packed a lot of information into these two-day seminars.



For 2013, we have scheduled the following CLE seminars—
Feb. 11-12, 2013...Orlando, FL
Feb. 14-15, 2013...Miami, FL
May 13-14, 2013...Houston, TX
May 16-17, 2013...Dallas-Ft. Worth, TX
July 15-16, 2013...Portland, OR
July 18-19, 2013... Anchorage, AK
August 5-6, 2013...Harrisburg, PA
Nov. 11-12, 2013...Phoenix, AZ

Previous CLE grads endorsed our seminars, saying—
"One of the best CLEs ever attended. Informative and inspirational. Very lively and offered excellent real-world applications."

"Well done! Thanks for the great printed support information and good visuals. Stories paint a picture that's easy to remember. Lots of information—like getting a drink from a fire hose."

"Probably one of the very best local CLEs I've attended."

By educating attorneys, these CLE seminars go far to improve the quality of legal representation available to armed citizens who must act in self defense. They've proven popular with attorneys, investigators and others who work in the criminal justice system, as well as firearms instructors and armed citizens educating themselves to the highest possible standard.

The Network supports its members' educational efforts by offering 10% off seminar tuition. Network Affiliated Attorneys are strongly encouraged to attend and as full members of the Network, receive the 10% tuition discount. Non-member tuition is \$400; Network members pay only \$360. Full-rate registration is available at <http://armedcitizensnetwork.org/register> or to receive your member's discount, please call 360-978-5200.

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The Next Generation of Gun Owners An Interview with Ryan Gresham

by Gila Hayes

Long-term potential of any endeavor depends on involving people of all ages, since as the mature members age and pass on, it falls to the younger members to carry the effort forward. Armed citizens face the same reality, and we have to wonder if traditional youth shooting recruitment efforts, focused primarily on hunting and outdoors sports, is working. Owning self defense guns entails a different set of concerns, yet approaching youthful gun owners through self-defense issues is not a common outreach tactic.

Interested in how to involve younger gun owners in armed self-defense preparation, I recently queried third-generation armed citizen Ryan Gresham of GunTalk TV about young adults and firearms ownership.

Ryan is the grandson of famed outdoorsman Grits Gresham, who among other accomplishments is remembered as host of ACB's American Sportsman series. Ryan's father is Tom Gresham, host of GunTalk Radio and other broadcasts. Ryan hosts a number of the video episodes of GunTalk TV and Guns & Gear and he plays a vital role behind the scenes of these and other media productions.

At 34, Ryan bridges the Generation X and Generation Y groups who comprise the younger demographic of Americans. As a member of this age group and as a firearms industry professional, he has much to share with both older armed citizens and with his peers.

Let's switch now to Q&A format, so you can hear Ryan's ideas and experiences in his own words.

eJournal: Thank you for talking with us, Ryan. Before we get into the questions, could you tell us a little about yourself and how you came to your role as host on GunTalk TV and other broadcast programs.

Gresham: I grew up shooting and hunting, but the self defense, tactical side of things wasn't nearly as prominent until 10 or 15 years ago, so I didn't really grow up on that side of it. I was more on the shooting and hunting side of things.

eJournal: Well, you're a third generation Gresham, so family ties were surely an influence! Tell me, how young were you when you took your first shooting class?

Gresham: I was taught by my dad and grandpa to shoot, but it wasn't until about six years ago that I did a class with Clint Smith. That was a lot more instruction than I had ever had, especially when it comes to handguns and self defense. Since then, I've done all kinds of classes, some with Tiger McKee and some with the VATA Group. I've done other classes at Gunsite. Some are media-type events, where it is a class, but not their whole program. Someone described these as "a social event interrupted by gunfire."

People used to say to me, "Are you going to be a writer when you grow up?" and I'd say, "Absolutely not!" I ended up being in the business as a media person. Part of the reason is the need to have younger people on camera. I don't really want to be on camera, but when I am, I think it makes the show a little more diverse because middle-aged white guys host most of the programs out there!

eJournal: Your leadership can make a big difference for 20-30 year olds who are wondering about guns for self defense. What motivates a 20-30 year old to own a gun?

Gresham: Traditionally, you were introduced to shooting guns through your dad, your grandpa, or your uncle. Mostly, that was about hunting, not about shooting competition, self defense or anything like that. Now, a lot of people who are in their 20s to early 30s didn't grow up hunting or shooting, but they are interested in guns, but not because they want to start hunting. There's more to hunting than just having a gun! You have to know how to hunt, you have to have access to land, and that's all stuff a friend or relative has to introduce you to.

You DON'T have to have a friend or relative introduce you to shooting. If you want to go buy a semi-automatic handgun, you can go out to the range, get instruction, and then you are off to the races. From my personal experience and knowing the experiences of some of my friends, I think it takes them a little time to come around to the realization that maybe they'd like to have a gun for self defense.

eJournal: The shift to owning self defense guns is a serious decision and coming to terms with deadly force issues can be difficult.

Gresham: I have a head start thinking that way because of my dad and GunTalk Radio. For a lot of people, especially people in their 20s, they don't see or understand a need for self defense. [Continued...]

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I think once you get married and have children, you have a house that you care about, then you have more things that are important to you. I think you start thinking about defense differently. You say, now I need to provide protection.

In a way, it is almost like life insurance. Most people who are 24 years old could never envision a need for life insurance, and might say, "Why would I spend money on life insurance? This is silly!" But all of a sudden, you are 32 and you have a house and a wife and a child, and you say, "Hey, I have some responsibilities here. I need to protect and provide for my family." Life insurance and gun training is really the same thing, when you compare it that way.

I have friends who ask me, "You know guns. I'm thinking about getting one. What kind should I get?" And I tell them that there are a lot of different options for guns and a lot of good options that aren't too expensive, but first you really ought to go get some training. Spend a day or two with a good trainer before or right when you get your gun.

For a lot of them, I think they go, "That's going to be another \$300 or \$400! The gun's going to be at least \$400 then there is the ammo, and now you're saying I've got to go get a class. That's going to be almost as much as the price of a gun." I think that is a speed bump.

eJournal: How is this age group's earning power? Is \$500 for a three-day class an expense they really, really cannot fit into their budget? Or is it simply a matter of having different priorities?

Gresham: Obviously, it is going to be different for different people, but probably this is more a question of priorities. They don't understand the need. They don't understand what they are going to learn. They don't know what they do not know.

eJournal: Crime in general has been declining for several decades, but at the same time, we've seen a number of highly-publicized attacks that raise concerns about personal safety. In light of current conditions, what kinds of violence do younger people fear?

Gresham: Part of what contributes to a lot of concern is the 24-hour news cycle. Crimes like abductions, kidnappings and murders have been happening forever. Earlier, George Zimmerman would have been a local story somewhere in Florida and you would have never heard about it in Seattle. Now, it is a story that they talk about for a month or two months, because they need to fill airtime. Now, everyone is just more aware of the crime that is out there, and the more absurd or terrible the crime is, the more news coverage it gets!

eJournal: A good example of that might be the shooting of Congresswoman Gabrielle Giffords in AZ. The news came out very quickly, and few could help but think, "I could have been in that crowd or near by. What would I have done?" When considering such events, what kinds of protective solutions do you think are favored younger people?

Gresham: So many people have not thought it through at all, and who knows what their response will be? It might be, "Oh, my gosh, let's call the police!" or "Why can't someone come help me?" But there are certainly going to be people who decide that pleading with a crazy person is not going to work so you have got to do something else. I think there are definitely people who look at these shootings and terrorist attacks and things of that nature, and they say, "You know what? I'm going to jump this guy" if something happens. They may not have thought, "Maybe it would be a good idea to get a gun and get trained," but in the stories that I read about, I think I'm seeing more and more citizens intervening, jumping on people and holding them down. The Gabrielle Giffords shooting was a good example of that. Not everybody there curled up in the fetal position; not everybody there went running for their lives. Some people jumped on this guy and held him down.

eJournal: That takes some courage!

Gresham: I think it is great! If people would stop for two seconds and think about it, they'd start realizing that the police can't stop a mass shooting.

eJournal: Perhaps the news reports are providing examples of courageous behavior that inspire potential victims to defend themselves or others.

Gresham: It is ironic that the liberal media is helping propagate the idea that there is a need for gun ownership. It is not just CNN, but it is news at your fingertips. It is like a buddy of mine says if we're arguing about something from history or sports, "We don't have to argue about this! With your phone, you have the world at your fingertips!"

eJournal: I'd agree, but with reservations because it is so hard to separate misinformation from fact in all the material online. Is that a skill your age group has mastered?

Gresham: I think so. I think they are more likely to check into something to see if it is true or false.

eJournal: How?

Gresham: Well, you have the Internet at your disposal.

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You know what is funny? People will also poll social media. That isn't necessarily getting the facts, but it is a way of finding out what your friends know.

Just this last week during the presidential debate, I was looking on Facebook and a friend who is in the gun industry made a comment about the candidates talking about their views on guns. A friend of his (her profile picture is an Obama-Biden button), said, "I just don't see why you are worried about an assault weapons ban. You guys don't need machine guns anyway." In a lot of the country, it is assumed that the assault weapons ban has something to do with machine guns. They just have no idea!

Several people who were watching this conversation on Facebook chimed in, and I was one of them. I said, "The assault weapons ban has nothing to do with machine guns. In fact, a lot of the bans were just on cosmetic things." Then nine or ten people chimed in with different facts, and she may have been educated right there on Facebook by that little conversation.

eJournal: You and the others were able to put forward the facts with such immediacy as to make a difference, if not with her, maybe with others who read the exchange. So to get back to perceptions of vulnerability, I'm curious if being more aware of violent crime has somewhat diminished the youthful attitude of invulnerability.

Gresham: We are aware of crime and get news alerts. I think that is building a little more awareness in general. That is not just for the younger generation, either. On talk radio, which is live and weekly, we get immediate feedback from a lot of folks who are buying their first guns and they are in their 50s, 60s, and 70s. They are worried about the state of the world. They want to be able to protect themselves. I think the 24-hour news cycle contributes to that, as well.

eJournal: In addition, I think some of the edutainment programs introducing guns make a difference. I was amazed at the variety of video topics I saw on your YouTube presentations alone, and then there is Guns & Gear on the Pursuit channel, too. I was checking out your YouTube videos (<http://www.youtube.com/user/GunTalkTV?feature=watch>) and it seems that anyone watching and listening to your articulate descriptions of one gun or another or of shooting skills and why they are important, would realize the value of owning a firearm and being skilled in its use.

Gresham: Well, thanks. You know, making this kind of television is always a balance because we have to make it entertaining, fun and informative. Something that we try to do in all of our shows, is that we try not to talk over the viewer's head.

We don't want to talk to anybody like they're dumb, but at the same time, so much of the gun media assumes that you have been shooting for ten years and they start from that knowledge base. We try to never make that assumption. I don't mind

learning things on camera! I have no pride and I don't get worked up about looking cool on camera.

eJournal: But you learn a lot and through watching you learn, the rest of us learn.

Gresham: Exactly, and that's my approach. I don't mind being the student on camera. It is funny—even though I know the material that we're teaching, I still learn stuff myself.

eJournal: When we teach we learn! Where can our readers watch some of your work on video?

Gresham: The best places are <http://www.guntalk.tv/> and just type in GunTalk TV to YouTube, we have a bunch of videos there. That is probably the universal way to see everything, since YouTube is the best distribution channel for videos on line. You can find our TV shows on the Pursuit Channel and NBC Sports. They run third and fourth quarter. During first and second quarter viewers say, "Where did you go?" Well, we're out filming the shows that will be on third and fourth quarter [laughs].

eJournal: Yes, but we want the programming all the time! Well, that's the nice thing about YouTube—we can go check out back programs.

Gresham: That's the nice thing about online video, they are pretty much there forever, so far as we know.

eJournal: I think you're probably right! Well, Ryan, this has been very educational, and I thank you for giving us a look into how our younger armed citizens are getting information and what some of their needs may be. We look forward to following your work for years to come!

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Please enjoy the next article.]*



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President's Message

Zimmerman Trial Date Set

by Marty Hayes, J.D.

The new judge, the Honorable Debra S. Nelson, has set a June 10, 2013 trial date in the ongoing prosecution of George Zimmerman for shooting an unarmed black teenager who was

bashing Zimmerman's head against a concrete sidewalk. Of course, there is a very likely chance the court date will be moved back, especially if the State of Florida keeps delaying and stalling the release of discovery (prosecution evidence).

What you might be wondering though, is what ever happened to the Stand Your Ground (SYG) aspect of the case? You remember that, don't you? It is the statutory provision that people believe means that one does not have to worry about criminal prosecution if their shooting is "justified." When I have a little extra time, I like to read the gun forums, and I see the comments all the time saying they don't have to worry about the legal aftermath of a self-defense shooting because their state has a SYG law in place. I wonder how that philosophy is working out for Zimmerman now.

I have been saying for years that you still have to prove your innocence unless, of course, the prosecutor decides not to press charges. This exact scenario is now playing out in Seminole County, Florida, where Zimmerman (according to news reports) will undergo a SYG hearing before the trial date. If, at that time, the judge decides that Zimmerman (to a preponderance of the evidence) did in fact reasonably use deadly force in self defense, then the case against Zimmerman will be dismissed AND statutory law eliminates any chance for a civil suit.

Or does it?

Statutory laws are presumed to be constitutional, but they are also subject to interpretation by the courts. Has the right to sue someone for the tort of battery or wrongful death despite a SYG ruling been subjected to judicial review? Perhaps one of our Florida attorneys can research this, but I know from personal interaction with the court system in Washington State, that we have a very active appellate court that routinely calls statutes passed by our legislature null and void, or at least, interprets the statute to mean something other than what it says.



After seeing a SYG statute in action in the Zimmerman case, I am not convinced they are the best thing for the armed citizen. Let me explain. First, if the shooting is not clear cut (and most aren't), the defendant/armed citizen must still prepare (spend money) to participate in a SYG hearing. And, if the armed citizen faces a possibly anti-gun judge, anti-gun prosecutor and possibly anti-gun sentiment in their local area, then the armed citizen who is being prosecuted simply must prepare the same way for the SYG hearing as they would for a trial.

That preparation calls for the expert witnesses who must be secured and paid for, along with a full and complete investigation by defense investigators. The legal team of attorneys and paralegals must dig into all the prosecution's evidence, and (at least in Florida) end up talking with and deposing all the witnesses expected to testify at trial. If pushed by the prosecution, you end up needing to put on a whole legal case, and then if the case is not dismissed by the judge, you need to do it all again for the criminal trial!

And, here is probably the worst part: the prosecution ends up seeing all of your case before the trial. They see the strength of your experts and can then craft cross examination to weaken your arguments at trial. They also see your legal team's cross examination as it attempts to dismantle their experts and investigators.

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Other Zimmerman News

Since the last time I discussed this case, we have seen a few substantial legal decisions. First, Zimmerman moved to have the second judge (Kenneth R. Lester, Jr.) on the case recuse himself, due to an obvious bias against Zimmerman. The judge declined, at which time Zimmerman appealed that decision, and the Florida appellate court agreed that Judge Lester needs to go. The appellate court said, in part: "A motion is legally sufficient if it alleges facts that would create in a reasonably prudent person a well-founded fear of not receiving a fair and impartial trial." In other words, the appellate court agreed that Zimmerman's fear of not receiving a fair and impartial trial was well-founded.

The next important step in the case for the Zimmerman legal team is the discovery process. They have filed several motions to compel the state to produce their evidence. They contend the State of Florida is not sharing all its information, including evidence that would help prove Zimmerman's innocence. One of the motions is also to subpoena the records from Twitter, Facebook and T-Mobile. I just talked about this issue recently when I filmed the next season of Best Defense TV show. Anymore, it is standard operating procedure to get these records, both on the prosecution side, and also on the defense side (if applicable). Please, Network members, be careful what you post online, twit and text. If you say stupid things, it may come back and haunt you.

Another item of importance in the case is the State of Florida's attempt to stifle the defense's free speech regarding the case. In other words, after blanketing the Florida landscape (and tainting the jury pool) with their

message against George Zimmerman, they now want to stop public discussion disputing the racial accusations and other charges against Zimmerman. At this writing, the court has not ruled on this request. So, now you are up to date (sort of). I left out a lot of minor motions and other legal maneuvers. We will continue to watch the case and bring you updates when logical.

Election Narrows

Wow, what a difference a month makes! As you recall, last month I wrote about the upcoming ammunition and hi-cap magazine scare which I foresaw, based on the polling numbers in the upcoming election. At that time, Obama was ahead of Romney in just about all the swing state polls, and I was very concerned about an October surprise. Now, after 3 debates and just days before the election, I am cautiously optimistic that we gun owners might avoid a decade or two of an anti-gun Supreme Court rulings.

I don't like mixing politics and the Network, and if it weren't for the implications on our armed lifestyle, I would avoid it all costs. But, reality dictates otherwise. Here in the Pacific Northwest, I haven't seen a run at all on ammo or guns, and that is good. But having lived through the 1987 run on guns and ammo, the 1994 run on guns and ammo, and the 2009 run on guns and ammo, I remain a pessimist. I will keep a close eye on what happens election night, and plan on taking the day off Wednesday, Nov. 7th and doing some emergency purchasing, as the run will surely start the day after the election, if Romney loses.

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Attorney Question Of The Month

With the generous help of our Network Affiliated Attorneys, this column helps our members understand the world our affiliated attorneys work in and demystifies various aspects of the legal system for our readers. We're embarking on a new and important topic this month, with questions that brought in so many great responses that we'll run the second half of the answers in the December edition of the journal. Here is what we asked our Affiliated Attorneys--

Network members frequently ask where they stand legally if they shoot an attacking dog. Most cities have ordinances prohibiting the discharge of a firearm, and in other cases we've seen the shooter facing animal cruelty charges or additional violations piled on by a prosecutor. We have several concerns on this topic--

- Does the law in your area allow shooting an attacking dog?
- How does the law balance the necessity of stopping a dog attack against ordinances prohibiting shooting in a restricted area?
- In your area, is it likely that shooting an attacking dog would result in charges? Have you defended clients after this kind of incident? What issues were raised?
- How do these considerations change if the shooter defends their pet or livestock, instead of human life, against the attacking dog?

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It is a sad fact that police officers in many jurisdictions almost routinely shoot non-stray dogs, in some instances with suppressed weapons, in order to perfect entry onto property when chasing a subject or fugitive, or to effect a search, arrest, or rescue.

Despite the lack of legal repercussions to LEOs in almost all of those incidents, the legal issues engendered by this month's Network attorney questions are subject to wide-ranging debate.

My take on an able-bodied adult's shooting an attacking dog in an urban setting (other than a fighting breed, one trained to attack, or the leader of a threatening pack), who has not yet bitten a person or another dog is quite simple: Whether you go armed or not, carry OC spray and a collapsible baton to use on domesticated animals as first and last resort, if at all possible. I, and others I know, have used those less lethal solutions successfully.

I advise that because a dog bite is not generally thought to constitute deadly force, and even though the law allows one to shoot a man in some circumstances, the law almost never expressly authorizes the shooting of "man's best friend." (It is actually rare for a single household dog to kill or permanently maim or disfigure an able-bodied adult). The public outrage is almost always horribly negative to the shooter, and such shootings are not usually covered by any homeowner's insurance policy or clearly immunized under a self defense or justified use of force statute. It should go without saying that one should never, ever pursue a fleeing dog to shoot it or shoot a dog when the dog is on the dog owner's property and you are present without permission.

The statutes of my state demonstrate the lack of complete clarity as there really is no direct authority sanctioning the shooting of a dog in self defense or defense of others or one's own dog. In Florida, a pet dog is considered property. The use of deadly force solely to protect property is not allowed generally. However, shooting of a dog in Florida is not per se considered the use of deadly force since a dog is not a person. Thus, the statutes to be analyzed are those on improper display or discharge of a firearm, animal cruelty, and crimes involving harm or destruction to the property of another.

Shooting an attacking dog (who is biting or has bitten) is justified and would not be animal cruelty in Florida because that crime is defined as the "neglect, torture, or torment" causing "unjustifiable pain or suffering" to an animal. It does not constitute a property crime ("criminal mischief" in Florida, akin to vandalism) unless malice is proved. It may, however, be prosecutable under one or more firearm statutes.

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Firearm crimes may be charged when a prosecutor deems shooting was unnecessary or otherwise ill-advised, for example, when innocent persons or property were threatened or actually harmed by the gunfire. An affirmative defense to the crime of "improper exhibition," a misdemeanor, is that the display of a gun was in "necessary self defense." Thus, shooting to protect one's dog might be charged as a brandishing crime, if witnessed.

The statute most likely thought applicable is the unlawful discharge provision, Fla. Stat. § 790.15(1). It provides generally that it is unlawful to discharge a firearm in a public place, outdoors, or on residential property, but the prohibition does not apply to a person "lawfully defending life or property." I therefore conclude that it does not constitute the crime of unlawful discharge of a firearm to shoot a dog when defending yourself, another, or your own dog. (The almost absolute general bar on taking warning shots applies). I suspect many prosecutors believe improper exhibition and/or unlawful discharge should be charged if the shooter was defending a dog and a child eyewitness has suffered trauma from what he or she witnessed. Then the shooter/defendant must come forward and prove the inapplicability of the statute or an affirmative defense. Another consideration is how a Stand Your Ground statute might be applied since most, including Florida's, do not expressly include dog attacks. Hence the lack of certainty, and more reason for my advice against shooting man's best friend . . . except when there is no other available course of action.

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Maryland has a hodgepodge of statutes and case law concerning dogs. Statutes that may touch upon shooting a dog are spread out through various sections of the Maryland Code. The amount of case law is very limited, and one of the most recent reported cases found a statute used to criminally charge a man for shooting a neighbor's dog to be vague, and suggested that the legislature review the statute. As far as I can tell, the legislature has failed to do so.

The questions raised by the members are directed towards shooting a dog in defense of themselves, others, or

livestock. In that case, I do not believe criminal charges would be pursued.

If a Maryland citizen were to shoot a dog in self defense, and it takes place off the citizen's property, it is likely to be done with a handgun. The focus of the police would probably be on whether the citizen is lawfully carrying a handgun. It is nearly impossible for the average law-abiding citizen in Maryland to obtain a carry permit.

One also needs to be aware of the civil law implications of shooting a dog. Maryland has a specific statute covering this situation. Article 24, Section 11-505 of the Annotated Code of Maryland, entitled: Dogs attacking livestock, etc., may be killed, states: "Any person may kill any dog which he sees in the act of pursuing, attacking, wounding or killing any poultry or livestock, or attacking human beings whether or not such dog bears the proper license tag required by these provisions. There shall be no liability on such persons in damages or otherwise for such killing."

If I were defending a client for a criminal charge arising from the shooting of a dog under the circumstances addressed in this statute, I would argue that the phrase "no liability on such persons in damages or otherwise for such killing" would also apply to criminal charges. I believe this reading of the statute is consistent with the other statutes concerning self defense generally, and those addressing harming or shooting dogs.

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We don't have an ordinance about attacking dogs, however I would say if a dog is attacking a person one would be justified.

We do have a statute on if a dog is attacking livestock, and it is allowed.

I had a case where man shot dog under those circumstances and was charged with two felonies: aggravated animal abuse and unlawful use of a firearm.

We went to trial and he was found not guilty on both. The aggravated animal abuse was dismissed outright but he

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was tried on lesser included offense of animal abuse and the unlawful use of a firearm. The latter was totally bogus because it has to be against a person not an animal.

However, the media beat up on my guy and slanted the news stories so much that the bloggers went to town on him saying he was evil and his synapses weren't firing and basically wanting to lynch him. Therefore, we tried it before a judge. Very quick trial, very quick "not guilty." However, he had to go through much stress and financial burden.

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You should know better than to ask lawyers to discuss their "dog" cases. We have all had many dog cases throughout our careers!

However, I have actually had the pleasure of trying a case involving a wonderful young lady who had to use her firearm to defend herself against an attacking pit bull in suburban Kansas City. The unfortunate facts of this case are that this girl's brother was brutally murdered by some bad characters in Kansas City. Death threats were made against the family and the family felt quite threatened. Law enforcement was not terribly responsive to the family's needs, so certain members of the family, including this young lady, purchased firearms for self defense.

In a suburban Kansas City, where things are rather conservative and by the book, this young lady was taking a walk by herself in a city park area. While enjoying herself on her walk, all of a sudden, a pit bull that had gotten away from its owner and rushed toward my client, who is a very small young woman, weighing under 100 pounds. Fortunately for her, she had brought along her newly acquired Springfield Armory pocket pistol and had it in her fanny pack.

She was able to retrieve the weapon from the fanny pack and fire at the attacking dog. The gunshot immediately

ended the attack from the dog. Unfortunately, the dog owner called the police. The city's "finest" arrived on the scene and arrested my client and charged her with, as I recall, discharging a firearm within the city limits and criminal destruction of property. No charges were filed against the dog owner for violating the city's leash laws!

The prosecutor offered no meaningful plea agreement. My client was pursuing a career involving higher learning and could not withstand a criminal conviction. Therefore, we tried the case.

My argument to the trial court was that my client should be entitled to the same rights of self defense against an attacking animal as she would have been against an attacking person. Kansas and Missouri jury instructions clearly state that an individual may use the degree of force necessary, including deadly force, when he or she believes they are in imminent danger from death or serious physical injury. I asked the Judge to take judicial notice of the violent nature of pit bulls, in general. I also proved to the court that my client was in reasonable fear of imminent danger of serious physical injury or death at the hands of this large, muscular and brutally violent animal.

The prosecution was very vigorous in the presentation of its evidence.

I presented the Judge with the jury instructions that would be used if this case were tried to a jury and asked him to allow my client to stand in the shoes of someone using deadly force against an attacking human being and allow her the same rights of self defense against an attacking animal. The Judge agreed with my position and found my client not guilty.

Frankly, I believe that the case should have never been filed in the first place. However, we trial lawyers find ourselves in these situations more often than we wish and have to make the best of the law and the facts given to us. Sometimes, we need to think outside the box and be imaginative in using analogies in our arguments involving legal principles.

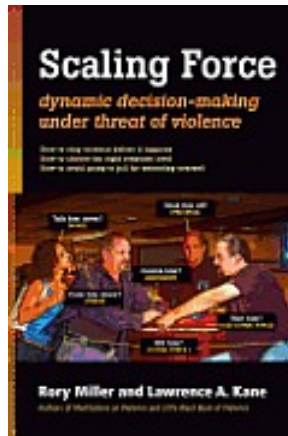
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Book Review

Scaling Force: Dynamic Decision-Making Under Threat of Violence

By Rory Miller and Lawrence A. Kane
 ISBN-13: 978-1-59439-250-4
 YMAA Publication Center
 www.ymaa.com
 800-669-8892
 Retail price: \$18.95
 312 pages, illustrated, softbound



a nearly 300-page book that is full of illustrative vignettes.

The authors begin by identifying six levels of force and their appropriate application. The rationale is illustrated by a case in which several Good Samaritans in Manhattan tried to stop a madman with a knife, but all were injured until police shot the offender. In one brief story, the authors clarify the necessity of applying the appropriate force option. The Good Samaritans who tried to help were ineffective and they got hurt because their force options were too low for a knife attack. The authors explain, “A scale of force options gives you a set of

tools for managing violence...Choosing the right level of force lets you control a bad situation in an appropriate and effective way, increases your chances of surviving without serious injury while simultaneously reducing the likelihood of adverse consequences from overreacting or under-reacting, such as jail time, debilitating injury or death.”

Reviewed by Gila Hayes

I have been waiting for Miller and Kane's collaborative effort, *Scaling Force*, for over a year. I started reading it the day it arrived, and recognizing the importance of the material, spent the following week studying it in detail. I can think of no one more qualified to write on the topic of decisions bearing on use of physical force. Though it is enjoyable reading, the material is complex and the authors' coverage of it is quite detailed.

Most recognize the ethical mandate to understand use of force law in the context of firearms, but that same responsibility is rarely taught with hand-to-hand techniques. Maybe people think, “Using a gun might get you thrown in jail, but how much harm can you do with empty hands?” This thinking ignores how litigious Americans are, laws prohibiting unlawfully restraining another citizen, and the difficult but necessary task of selecting the justifiable degree of force for the threat that you face. As the law enforcement professional writing the foreword for *Scaling Force* asserts, “Reacting too small can get you hurt. Acting too harsh may land you in court.”

How to make the distinction? The traditional force continuum helps but with the courts and law enforcement agencies eschewing force continuums, use of force decisions are now judged against “the calculus of reasonableness,” as defined in *Graham v. Connor*, which acknowledged that police have to make decisions quickly and with minimal facts, the authors explain. Citizens using force in self defense face similar legal pitfalls and also answer to the reasonableness standard.

With this introduction, *Scaling Force* sets out to define the justifiable application of various degrees of force, in

The key is in understanding the circumstances to which various force options are suited, so the authors embark on an explanation of types of threats. First, they separate violence into two categories: social and predatory. The first is undertaken publicly to establish status, while the latter tends toward one-on-one victimization, as practiced covertly by a mugger, serial killer or rapist. Do not confuse the two, the authors warn since, “The very factors that might de-escalate a social situation will almost certainly trigger a predatory attack if they make you appear weak.” Within both social violence and predatory violence are subsets of various motivations, the authors describe. While some of this is a review of Miller's earlier books, it sets the context for new material in *Scaling Force*.

Kane and Miller write that recognition and avoidance can stop the majority of the dangers lying in wait for private citizens. Failing to read signs of impending violence costs much-needed reaction time.

How many books or lectures have urged you to “be aware!” but failed to teach how? *Scaling Force* teaches it using stories and suggestions, including advice to

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watch people out in public and select the ones you would victimize if you were a predator, learning from the behaviors that make them look vulnerable to you. The further we can get into the mindset of the offender, the better we detect predatory approaches. The authors also explain the interview process for victims, defining steps in an interview-to-assault timeline that starts with engaging the intended victim in conversation, camouflaging true intentions, distracting the victim, and then executing the crime. If you thought situational awareness was all about prevention, the authors also teach maintaining alertness during a fight, identifying details that may save your life and showing how to recognize them.

Scaling Force's description of justifying use of force in self defense is stated in slightly different terms than the Ability-Opportunity-Jeopardy triad common to the Network's educational materials. It is interesting to read concepts like reasonableness and excessive force discussed from the viewpoint of physical force. The same is true for the authors' paragraphs on the doctrine of disparity of force, equal force and proportional force. They give particular emphasis to being able to explain what you knew at the time of the incident, stressing, "Good people tend to make good decisions. These decisions can always be refined and the decision-making process can be improved but usually people don't trip themselves up much in the process; they trip themselves up in the explanation...Because self defense is an affirmative defense, it falls on you to explain. You must be able to articulate exactly why you made each decision—why you needed to become involved and why you used exactly the level of force and even technique that you used."

The authors suggest watching footage of real fights on YouTube, looking for elements of self defense, what escalated the conflict and what responses were justifiable.

They then ask readers to become aware of their intuitive flashes of knowing, and define for themselves what perceptions informed that knowledge to get in the habit of articulation. In light of how much rests on being able to explain what we knew and how we responded, it should be a very worthwhile skill to hone.

With the supporting prerequisites out of the way, the authors tackle the first force level, presence. This isn't an easy topic, because the power of personal presence draws on so many intangibles. The authors describe a host of factors that can project authority including

appearance, self-image, life experience, physicality and fitness, stance, positioning and proximity. In the end, the reader is reminded that presence can prevent fighting, but it can also start conflict. The chapter is full of applicable information, much of which goes beyond mere presence.

The second force option *Scaling Force* details is verbal. We must realize that talking isn't necessarily communication. Words are risky, especially as they become part of witness reports that inevitably follow a fight. Specific verbal strategies, including misdirection and manipulation, are offered, but perhaps the strongest is to either say nothing, or only a terse, "no" or "back off!" to avoid projecting weakness by talking nervously or apologizing for not being able to comply with the request by which the predator is testing you, they write.

A lot of our Network members will never be in a life or death fight. For this we are grateful. Even for these readers, many of the lessons in *Scaling Force* are readily applicable to daily life. In the chapter *Level 2–Voice*, instruction about communicating and maintaining boundaries is applicable to interacting with the office bully and other low-level predators as well as the mentally ill or people socialized in other cultures.

An extension of nonverbal communication is touch, but it is so fraught with both negative and positive meaning that its use as a force option requires skill and situational understanding, the authors continue.

When in doubt, don't touch, because "there are so few situations where it is appropriate, so few where it might work." Once a threat is in motion against you, however, touch transforms into a useful tool, as the paragraphs on projection of force, essentially redirection, illustrate.

The authors move on to describe the use of and justification for restraining force, termed Level 4. The options include joint locks, takedowns, holds and pressure point manipulation and they make it clear that justifiable applications for private citizens are limited. Level 4 requires very close proximity, and if you do succeed, what will you do with the threat to avoid an immediate explosion of violence as soon as you release them?

Before the chapters about destructive force options, the authors write a very thought-provoking page that explains making choices in the heat of a fight as clearly

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as I have ever read. To summarize, a justifiable decision to go to a higher degree of force is not the result of deciding you want to change your strategy, it is in reaction to “taking damage” from an assailant. “It will be thrust on you,” the authors stress, adding that if you have time to think about options, “you are contemplating assault.”

The section on takedowns is a lesson in denying balance to an assailant, but it reminds the reader, as do the other lessons in the many techniques discussed in *Scaling Force*, that reading a book about physical technique is of but limited value. “Everything in this or any book is just words on a page. That’s, at best, knowledge. You want to apply this when you are scared and desperate, so you need, at minimum, understanding,” they advise.

As we enter *Scaling Force*'s final quarter, the authors define two additional levels of force, identifying the next to the last as Level 5, which is “to stop an attacker and facilitate your escape to safety without permanently injuring or killing him.” Inflicting harm on the assailant is justifiable to prevent being injured, and here, the authors essentially explain the doctrine of competing harms.

They later add that for Level 5 force to succeed, it must be “ruthlessly applied to end the confrontation as quickly as possible.” Their discussion of these issues is realistic, a little chilling, and of considerable value.

The authors acknowledge that the boundaries between less-lethal force and deadly force are indistinct, “thus reinforcing the importance of being able to articulate the threat you faced and why you did what you did to escape it.” For armed citizens, in light of the places where weapon possession is verboten, a good reminder of defense alternatives, their application and their justifiability is always welcome.

Scaling Force's transition into deadly force, which the authors call Level 6, is sobering, as they labor to invoke both the finality and the immediacy of death and dying. Coping with pain, countering an armed assailant, the fallacy of the fair fight, and the element of surprise are discussed. Witness dynamics and aftermath issues that include psychological stresses, legal realities and more are identified.

Since *Scaling Force* is written primarily for martial artists, the authors debunk a number of the common “death blow” techniques, summarizing by explaining, “From whatever position you find yourself in, you must get kinetic energy into the threat’s body. That energy must induce shock by stopping oxygen intake or blood flow or damaging the brainstem that controls the blood flow. It is that simple, and making it happen under stress is very hard.” They also outline knife lethality that could prove essential in explaining using a gun to defend against a knife.

In a brief conclusion, the authors emphasize that conflict and violence are not simple, single-facet topics. They’re as broad as the range of human behavior. Training that focuses only on developing skills for one aspect of defense—or what you expect will be needed for defense—just doesn’t make sense. Coming out alive is not as simple as instructors, books, or training DVDs make it seem. Neither is applying the right solution to the problem at hand. I think Kane and Miller have opened up the dialogue, and now the onus is on the practitioner to fill in the gaps in his or her own skill set.

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



Networking

by Brady Wright

Hello, and welcome to the November Networking column!

I recently heard from Don Streater who was sort of apologetic about responding after his last shipment. Don (and everybody), there is no need to respond unless you need more of something. Everybody has a lot on their plate and if you email me every time I send you something, you run the risk of waking me up before my nap is finished!

Don's supplies arrived about a week before his September swap meet. He has a table there with booklets and ACLDN brochures. He told me, "I talked to a lot of members about ACLDN, and was pleasantly surprised by some I didn't know who had already joined." Don is planning to set up a table again at the November swap meet. "Let's keep this ball rolling. And congratulations on the Legal Defense Fund hitting \$200K+."

As we do every month, Gila and I spend some brain cells on improving the various publications, websites and journals we send out, and we frequently get help from members who have expertise in that area. Rick Cross is one of those who does a lot of input on the Facebook page and other places, and he is now running a banner and link for the Network on his own page. Since he is an Advanced IT Specialist, we gratefully soak up whatever help he offers and for me that means any word with more than three syllables! Anyway, thanks for the link, Rick. Rick stresses to his students the importance of the Armed Citizens' Legal Defense Network as much as the importance of always carrying a firearm (and a less than lethal option like Sabre defense spray) for their personal protection.

He says, "We have insurance for just about every aspect in our lives and this should not be any different and

you'll have to forgive me for saying ... it's rather inexpensive!"

Rick, we agree: the Network is a terrific value!

The winner of the "Neat Business Name of the Month" award goes to Loren Collett, owner of the "Cool Gun Club" in The Villages, Florida! Ya gotta love that! Loren wrote, "I am retired now and have started a firearms training club in this retirement community of 80 thousand. As you can see from our website we are not in business, per se, to make money, only to make our community safer. If you carry and don't have your insurance it could cost you your retirement plans."

Loren is exactly the kind of person that represents the Network and the shooting community well. Check out the offerings from the Cool Gun Club at <http://www.LDCollett.com>. You can call direct at 352-259-3580 or email to LDC@LDCollett.com Finally, welcome aboard to James Reynolds, of Proactive Shooters LLC, in Henrico, VA. James is a trainer who teaches classes to approximately 1000 students each year and if you live in the area you can drop by or call him about his classes at 804-307-8315. His website is at www.ProactiveShoters.com.

One more thing: By the time you read this, I hope that every one of you has voted, either by absentee ballot or in person. There are more than 80 million gun owners in this country and there has never been a more important election for the preservation of our rights as a country, and for the future of the judicial branch of the Federal government. We cannot leave our rights or our future to chance.

OK, I'll get off the soapbox for now! As usual, if you need any materials to give to clients or customers, call or email me at brady@armedcitizensnetwork.org especially if you have news to share, or know of a win we should celebrate. More to come next month. Stay safe out there!

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

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Editor's Notebook

by Gila Hayes

Recently, a listener to the popular GunTalk radio show called in to ask host Tom Gresham for his opinion of the Armed Citizens' Legal Defense Network. Tom, who has been a member of the Network since the

beginning, gave the strongest possible endorsement when he replied that he is a Network member. As a result, the Network enjoyed a nice little uptick in membership growth in October for which we thank Tom sincerely. After hearing from new members who reported learning about the Network on Tom's radio show, it hit me how much power there is in one call that gets on the air. There are no shortage of cases in the news that provide fodder for "what if" discussions, as people worry about what would happen to THEM if they had to draw their gun in self defense. These are perfect openings for a Network member like you to call in and ask if the radio host has heard about the Armed Citizens' Legal Defense Network.

Don't try to make your call a sales pitch, just ask if the host and listeners are aware of the Network and what it does for its members after they are involved in a self-defense incident. Give our website URL and leave it at that because how an armed citizen prepares for self defense and for aftermath issues is intensely personal, and each must make his or her own decision. We have packed the Network website with details and information to aid in deciding to join, but we never, ever use hard sell tactics in membership recruitment, since it is so critical that members are personally invested in Network participation based upon their own convictions.

In addition to acknowledging Tom's recommendation, I also want to say thank you to the members who have purchased memberships for friends and family members, or who have recommended Network membership to their friends, shooting buddies and fellow students in classes that they are taking. These new members are swelling Network membership, and that makes us a powerful ally for the next member who is involved in a self-defense incident.

I also want to recognize the members who have gone to the Network's NRA membership recruiter link <http://www.armedcitizensnetwork.org/> and joined the NRA or renewed their NRA memberships through our website. The Network gets a percentage of those membership sales, which we deposit directly to the Legal Defense Fund so more money's there to defend a Network member during the legal aftermath of a self-defense incident. If your NRA membership is coming due, I'd sure appreciate it if you ran your renewal through our recruiter link so that the Network's Legal Defense Fund receives the commission on your membership.

I want to give a quick follow up on the Atlanta-area legal appeal that I wrote about in last month's editorial. Recent new reports indicate that the Georgia Supreme Court has agreed to rule on whether McNeil's jury received proper instructions before they found him guilty of murder. If you're interested in how juries act on evidence and how they are reined in by the jury instructions, go to this link and read this good review of the John McNeil case.

<http://www.ajc.com/news/news/local/was-it-self-defense-or-murder/nSpxR/>

Much has been written about the upcoming election, and the second presidential debate really brought the gun rights issue out of the shadows. Not long thereafter, former Supreme Court Justice John Paul Stephens made some disturbing and really idiotic statements quoted in the Washington Times news website (see <http://www.washingtontimes.com/news/2012/oct/16/gun-owners-election/>). Read his comments and tell me how anyone can believe that anti-gunners are only intent on removing machine guns from the hands of private citizens. In stating that there exists no Constitutional stumbling block to outlawing the kinds of "automatic weapons used in Virginia, Colorado and Arizona in recent years," the former Justice showed how poorly informed he is about the firearms he favors restricting. As silly as the Stephens' statements were, they illustrate just how willing many are to deny Americans firearms for self defense. We still have a long way to go.

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Like the retired justice, a lot of American citizens cannot differentiate between semi-automatic and fully automatic firearms.

A surprising number of citizens don't understand gun owner concern over incumbent Presidential candidate Obama's willingness to sign an assault weapons ban. As the interview with Ryan Gresham earlier in this journal pointed out, a lot of people don't have a clue what was restricted by the last assault weapon ban, and neither understand nor care that commonly used firearms are capriciously included in classes of banned firearms owing to features that have no effect on lethality.

The only cure for ignorance is education and the best education is hands-on experience. Offer to take a co-worker to the range or ask your spouse if they'd like to invite several friends out for an hour or so at the gun club this weekend. Make the experience all about them, with low-recoil pistols and rifles for their first shooting experiences. Make sure they have good eye protection and effective hearing protection, and kindly but firmly insist on absolutely safe gun handling. Be sure they stay warm, dry, comfortable and safe. People who fear guns give up a lot of their irrational antipathy toward an inanimate object—a gun—when they learn that they can use it with complete safety if they know the gun safety rules and apply them rigorously.

Lead into or follow up a short and fun shooting session by sharing a nice lunch or a cup of coffee with your friends, so there is time to debrief, being sure to answer questions factually and without macho chest-beating, and using the opportunity to debunk all the uninformed myths about firearms use to which these non-shooters have been subjected. People are best led by example. Can you fill the leadership void on the firearms issue?

As November 6th looms, a lot of Americans are fed up with the whole charade and have started sending in their mail-in ballots and voting early to get it done with or to be sure they don't forget to vote. If the races in your community are that clear cut, good for you. Get it done. If you are still undecided, please take some time to read up on the issues, and then be sure to cast your ballot in time.

This is not an election during which we dare to abdicate our responsibility to influence the future of the United States of America.

Do you live in a state where the outcome of the Presidential contest is said to be predetermined, and you're discouraged because the electoral votes don't align with yours? First, let me ask if you really dare to believe the pollsters, predictions coming from a biased media, and assertions made by political analysts? What if your state's race is closer than you are being told? Personally, I live in a state that on the whole votes completely opposite of the way I do. Doesn't mean I won't vote, though. Every ballot sends a message, and we exert a lot more influence at the local and state level, some of which then carries up to national politics.

This is a good election in which to think like an elephant. No, I don't mean to invoke the GOP symbol, rather the fact that elephants have surprisingly long memories.

Don't forget the mean-spirited characterization with which Barack Obama portrayed rural people as bitterly clinging to their guns and their Bibles when he was campaigning for his first term in office.

Keep in mind a 2007 interview in which Obama said, "I am consistently on record and will continue to be on record as opposing concealed carry," explaining why he voted for HR-218 to allow retired police officers concealed carry rights. (See http://www.ontheissues.org/Archive/Promise_to_Power_Gun_Control.htm)

Don't forget Obama's more recent statement in the wake of the Aurora, CO shootings that he thought a lot of gun owners would agree (presumably with him) that AK47 rifles belong in the hands of soldiers not citizens. A bit later, Obama's press secretary said that the President favored renewing the assault weapons ban.

There can be little question about the kinds of gun legislation a second-term Obama presidency would encourage, nor much question about the politics of judges he'd appoint to replace retiring Supreme Court Justices, a topic that we have already discussed, so I need not echo it, only urge you to keep these facts in mind. Like the elephant, never forget! Use your ballot to make it clear that you remember past attacks on your freedoms.

*[End of November 2012 eJournal.
Please return next month for our December 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.

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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 email sent to editor@armedcitizensnetwork.org.

The Armed Citizens' Legal Defense Network, Inc. receives its direction from these corporate officers:
Marty Hayes, President
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We welcome your questions and comments about the Network. Please write to us at info@armedcitizensnetwork.org or PO Box 400, Onalaska, WA 98570 or call us at 360-978-5200.

