Appropriate Guns and Training

An Interview with Claude Werner

by Gila Hayes

Listening to other viewpoints makes our own choices better. The firearms community is rife with hard-core dogma about what is appropriate for self defense, in both equipment and training. As gun owners come from all walks of life, it stands to reason that a one-size-fits-all approach inevitably leaves some out.

Personal security instructor Claude Werner (pictured above, teaching), also a Network Affiliated Instructor, is one who is not afraid to suggest defensive solutions that run counter to popular beliefs. He established Firearms Safety Training, LLC after 9/11 and was Chief Instructor at the famed Rogers Shooting School in Ellijay, GA from 2005 until the end of 2009. Werner, then recently renamed his company Personal Safety Concepts, LLC, because as he explained there is much more than guns and shooting involved in personal security.

I spoke with Werner at the January 2012 SHOT Show, the shooting industry's biggest convention, to learn more about his teaching outreach and some of his non-traditional approaches to defense preparation. Let's switch to our familiar Q & A format, to learn from this instructor in his own words.

eJournal: Claude, some months ago, you and I discussed coaching new gun owners on what could be called "software" issues. I realized then that you have an oft-forgotten piece of the puzzle to which self-defense practitioners ought to pay more attention.

While we know you as the snubby revolver instructor, we don't know so much about your career, which no doubt influences what you teach, so let's start there.

Werner: Firearms are an important tool in one small context, but when I think back about my experiences, an awful lot of the solutions for my encounters in the various environments I've been in–military, governmental and industry–were largely software-related, so I decided to start focusing on putting firearms within a broader context of personal security.

eJournal: You use the term "non-permissive environment." Tell me how that applied in your former lines of work and how you transfer your experiences to your students' walks of life.

Werner: In military and government we think of a non-permissive environment as applying to guys from The Company, but for all my life, I have been what people call "the grey man." I remember at one point, hiding in a room that was filled with seven-year old children, thinking, "Well, they're short and I'm tall, so if I kneel down, I won't have a profile." I didn't really think about it, it was just something I did naturally, because I don't like to stand out.

After I retired and went into the private sector, I was in the commercial real estate business for a long time and then worked for a Big Five accounting firm. Especially when I got into the Big Five arena, I might have been in a conference room with 10 or 15 clients for eight to 10 hours at a time. The idea that you can carry a service pistol concealed and undetected in that environment is frankly, unfounded. It simply cannot be done.

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On the other hand, you can have a Beretta 21A in your pocket. In Atlanta, we had a guy go in and shoot up a brokerage firm. I said, "You know what? I will not be a helpless victim in that circumstance." Now, how's that going to turn out, granted that the 21A is not particularly powerful? Well, it is a lot better than harsh words or a pointed stick.

eJournal: That illustrates your willingness to abjure conventional thinking that nothing smaller than a 9mm will do. You've balanced risking your safety against gambling with your livelihood by carrying a bigger gun that, in your conference room example, would be "made."

Werner: A friend of mine who is a lieutenant in a Midwestern police department forwarded me a story of a poor lady who was going to a family social event and she did not care to have them know that she was armed so she did not take her pistol with, despite having a concealed carry license. Well, that is another non-permissive environment. The social environment is actually the largest non-permissive environment that we find ourselves in. Unfortunately, she was followed home and she was murdered in her driveway and a friend who was with her was shot through the head. Her gun was in her desk drawer because she had been told you have got to have a gun that is at least a 9mm, and it wasn't something she could carry in that family non-permissive environment.

If there is one thing that I object to, it is trainers telling people you have to have something in this size, which then defaults to people who frequently will not have anything at all. I have female clients and friends who have been counseled and trained that they have to have a 9mm, but I think the worst was, "I'm going to get my wife a HK USP Compact in .40." This poor lady's hand would barely fit around a 21A!

When I can get them away from the bad influence, which is frequently the male influence, I can say, "Here, try this out," and I hand them a 21A or sometimes a Beretta .380 or something that is smaller and it fits them. A little light that goes on, where they go, "You know? I could have this with me all the time." When I see that light, I like it!

To a certain extent, I have been castigated because I will tell people, "If all you can carry is a .22, well, carry a .22." And I've had people tell me, "You are a bad influence on people." If it means getting people to carry a gun all the time, I'll accept that!

eJournal: How do you deal with it when somebody has been sold an unsuitable gun and asks you to teach them to operate it?

Werner: One of my clients, a brand new shooter, had been sold a full-size Sigarms pistol in .357 Sig. He was of short stature with small hands, and not only was the caliber too big, the gun was too big, too. He could not reliably hit a silhouette-sized target at five yards with it.

So I said, "This is not optimal, but let's work with it," and did a one-hour lesson with him. The next session, he was shooting it and the same difficulties were coming up, so I said, "Let's just try something different for fun. I happened to have a Walther P22 in my gun box. With its double/single action, it worked similarly to his SIG. The Walther fit him perfectly. He fired one magazine and turned to look at me with a big smile, and said, "You know, this is really fun." We finished that session, and he went into the gun shop before he left and he bought a Walther P22. That is what he has been training with.

He says, "I carry this around with me all the time, I like it and it is really fun. I shoot on my property in South Carolina with it." That makes me think of the Jeffersonian concept of "let your gun be your constant companion on your walks." And it became that for him, where the SIG never had been.

Photo shows Werner demonstrating a drill for students.

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eJournal: I am sure you take some heat about fitting students like that with a small caliber gun. In fact, I'm sure when we publish this interview, some will say, "Oh, my goodness, that .22 is going to get that student killed." It is challenging to put aside our dogma and ask, "Honestly, what will work for this older gentleman with very small hands?"

Werner: I ask, "What suits him?" as opposed to what suits me. An instructor projects his or her personal beliefs, in spite of the fact that the student simply is not the same person as the instructor.

eJournal: That takes a good deal of open mindedness to apply. With the prominence of semi-auto pistols, I expect there is a good deal of open-mindedness influencing your development into the Snubby Guru, too. How did you develop that part of your repertoire?

Werner: That was an outgrowth of the non-permissive environment, too. When I was in college, I was a security guard. I came into work one Sunday, and there was a note in the guard's log to be on the look out for a 6'4", 250-pound man who had assaulted one of the building's tenants and threatened to come back. At the time, I weighed about 150 pounds, and I said, "Yeah, that is going to work out really well, if he comes back," because we worked unarmed.

The only gun I owned at the time was a Charter Arms .44 Bulldog that I'd bought more or less on a lark, but I realized, "This fits in my pocket," so the next day when I came into work I had it in my pocket. I was not allowed to do that–it was a non-permissive environment–but I realized that I had to have something that I could work with.

At that time, 30 years ago, the snub-nosed revolver was far more reliable than anything else available as a pocket pistol. For me, reliability is a very high factor in choosing a firearm for self defense, so that got me started on it. Because I was carrying it all the time, even when I got into the commercial real estate business, I said, I don't like to have weapons that I can't use well, so I started working a lot with snubbies and shooting them a lot. Several years ago, I said, let's see how far I can take this, and I started shooting IDPA with a six-shot snub.

eJournal: And you do not mean in the BUG (back-up gun) division, either!

Werner: No, I shoot in Stock Service Revolver division with snubby revolvers and I have won six sanctioned matches using a snub, sometimes against fairly seasoned competitors. It disproved to me many myths, like the one that says the sight radius is too short. No, that is just because you haven't practiced enough.

eJournal: Just proves how much of the equation is weighted toward the operator's skills. That brings us back to your premise that the software is always more important than the hardware. I'd like to explore how you teach mindset to students who are new to self defense. We're often urged to be a warrior, but you said your students don't watch action movies and don't want to be like the lead from Die Hard. Without telling them to be warriors, how do you cultivate a willingness to defend themselves decisively?

Werner: Many years ago, in his early writing career, Massad Ayoob posed a question to a woman who said she could never shoot someone. He asked, "What are you willing to do to prevent your children from becoming orphans? Who in this world is better prepared and more willing to raise your children than you?" I thought that was a brilliant way of putting it. When I have students who don't have the warrior's mindset, I point out to them the value that they have to their friends and their family.

A few years ago, before my father passed he was quite infirm, and I realized that if I was to die, and especially if I was to be killed, he would probably die as a result of it. Although I do have the warrior's mindset, if I didn't, I would say, "I am not willing to die, if for no reason than to spare my father the agony of having to bury one of his children."

This is another of those points, to which I see people cock their head a little, then they say, "You know? I never thought about it like that." I think for us to influence not only the people who have purchased guns but the ones who are thinking about it, we need to understand that sometimes people just need a little help. I remember when I was in the Army, we used to do a drill where one of us would provide just the slightest assistance for

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another guy to do pull-ups. I remember how many more repetitions you could do with just the slightest bit of assistance. In some cases, it was 50% more! Similarly, for us as instructors, that's what we need to do for people who are on the fence.

Frankly, I do not proselytize and I don't tell people, "You've got to have a gun," because I consider that a very personal decision, but for people who are thinking about it and are on the fence, we can say, "Is this something you have thought about?

What is your value to the people you hold dear and who hold you dear?" That may nudge them along toward being prepared with some kind of a safety plan, even if it is to just get a pepper spray, unarmed combat training, or something to assure their continued existence for the people they love and who love them.

We need to approach people that way, as opposed to saying, "You need to be ruthless," or "You need to be a meat eater," or, "You need to be a warrior." Those are terms that just do not resonate with much of the population nowadays and I think it is a turn off.

eJournal: It seems these folks feel worried about their safety. What are their concerns and how realistic are they?

Werner: With a few exceptions, I find they have a generalized sense of unease. For them, I try to put it into perspective by suggesting likely scenarios they may have to address. I don't have to do too much defusing of worry that the Ninjas will come from the ceiling because they haven't been watching action movies.

eJournal: What kind of training are you giving them?

Werner: When we train, typically you're on the firing line and your target is downrange and that is all that you have to worry about: what I call the myth of the lone gunman. But we are constantly out in the world with people around us, people that are important to us. How do we address those concerns?

Take home invasions, which almost by definition have more than one person involved. I've been compiling statistics on home invasions because

Above: One of Werner's students moves through a course of fire requiring target identification to avoid innocents, a very real world exercise for a relatively new shooter.

being a quant, I accumulate data instead of making up scenarios. In many cases, what is going to happen is that the man is going to physically interpose himself in front of the intruders and the woman will have to be the shooter. It is a huge role reversal! I have incidences where the woman handled it beautifully and no member of the SEALs or Delta could have done better. Unfortunately, in another set of circumstances of which I know, the woman shot and killed her husband. So, I'm very interested in that concept of how we work together as a team, but that is very different from team tactics as taught in a military or police setting.

eJournal: Data gathering should create more realistic expectations on which you can train students toward responses they can actually execute in a fight, too. What is taught sometimes seems to be quite at odds at natural human reactions, so it is hard for students to have faith they can do it.

Werner: I don't believe in the idea that we cannot train against nature. There are some things we can't, but then there are things that are natural for us that we learn to stop doing as small children. Take potty-training. We train against nature, and we learn to do it very successfully all of our adult lives. So in some cases, you may say, this is the natural response, but if you will do just a little training then you will not have that response or you can at least manage it. I want you to think about the circumstances and ask if that is what you really want to do. I am a big believer in visualization and role-play, having people try it out, then ask, "Are

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you comfortable or is doing this another way at least acceptable? Then work on that."

eJournal: Moving along, tell us a little about the classes that you teach. How is your training structured?

Werner: This past year, a lot of my business has been one-on-one or one-on-two coaching for people. I think of one couple that said, "We didn't want to carry guns without knowing what we were doing." They sought out somebody to provide that training. In their case, I put on a one day session just for the couple and part of it was firearms and part of it was the personal protection aspects, like "this is how you recognize danger; these are things you can use to diffuse a situation." I like to use the terms, "Avoid, Escape, Confront."

eJournal: Is that your version of the force continuum?

Werner: Exactly! I love John Farnam's saying about, "Stupid people, stupid places, stupid things," so you avoid those. But this couple's business was sound systems for conventions, and they had to be coming and going at odd hours. So I gave them this idea: "If you have to open the door to the convention center, when you are going out to your vehicle, look around for two seconds and see if there is anything there."

Then I ran them through some role-play. I'm a big believer in role-play. Skip Gochenour [National Tactical co- founder] had a great idea when he said, "We ought to be doing 50% of our firearms training with blue guns [non-firing replicas] so that we can do role play."

When I do role-play, I teach things such as don't let somebody get too close. I'm a big believer in proxemics. I don't think about it in terms of the reaction gap, as much as saying, this is how people use space. Understand that he is trying to get into your personal space and you want to keep him in public space. So address him when he is in public space, and tell him, "Stop, don't get any closer!"

eJournal: You are defining their safety zones and giving permission to protect that private space, something they may not have realized they had a right to do.

Werner: Yes, and I give them permission to be RUDE. A lot of people that I am dealing with now are persons of upper middle class and comfortable means. Those people are business people who are not accustomed to being rude to anyone. When you are dealing with people on the street, sometimes you have to be rude to them. I give them permission to say, "Stop! Don't come any closer! I do not want to talk to you!" or whatever verbiage they care to use.

eJournal: You implant ideas they can build upon. And here we are again, back to the software element. In role-play, you load in the programming of what to do in a bad situation. You know, a monkey could probably point the gun and pull the trigger. Shooting is not the hard part.

Werner: Exactly, that is simple. If we accept– though I don't really–but if we accept Frank McGee's doctrine of three seconds, three yards, three shots, how hard is that for anyone to do? How much training does a person need to do that, as opposed to managing the space and situation so that it doesn't even have to take place?

eJournal: How do you help students realize that one day of training isn't really enough to handle more complex situations?

Werner: The best way is to ask them questions for which they really don't have the answers. I'll leave that question like a time bomb, and they will cogitate on that. I ask open-ended questions, "You don't have to answer this now. I just want you to think of this situation ahead of time. I do not have the answers for you." They have to come up with the answer because they know their personal situation far better. What am I going to do? Follow them around and say, "If this happens here, you have to do this"? No, all I have to do is say, "these are issues you need to watch out for. If you think about it ahead of time, it is much easier to deal with them than making up a plan on the spur of the moment."

eJournal: You're teaching principles instead of specifics, and students act on the principles you taught.

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Werner: I provide students with a set of principles or fundamentals. Well, those are two different things.

eJournal: Definitions, please.

Werner: A principle is something that is a conceptual reality. For instance, my personal security is something I should have at least in the back of my mind at all times. It is more conceptual. Fundamentals are mechanical skills. So I give them a set of principles and fundamentals that they can work on, on their own, and tell them specifically, these are things you need to do when we get done training, because all I've done is show you what you need to do.

Below: Werner has been a friend of the Network since its earliest days. Here, he is shown sharing a joke with Network President Marty Hayes at the 2010 Rangemaster Tactical Conference in Tulsa, OK.

Every time that I teach, I provide them with drills they can do when they leave. People need to realize that a training class or session is only the beginning of establishing personal security, not the end of it. For example, I'm a big believer in dry fire. Even if it wasn't a great way to learn to shoot, which it is, it IS a great way to learn to manipulate your weapon unconsciously. And I want ultimately for people to be unconsciously competent from the standpoint of gun handling. Dry fire is the way to do that.

Then I give them a 36-round drill that leaves them with 14 rounds out of the box of 50 that they can do what ever they like with, but I tell them, "Do this with 36 rounds." If you do that once a month and do your dry fire once a week, then you are going to build your skills to the point at which your gun handling will be unconsciously competent and your shooting will at least be consciously competent.

eJournal: There is so much that we could talk about, but we are running out of time. If people want to train with you or refer someone to you for training, how can they learn more?

Werner: I have a website at http://www.dryfire-practice.com.

eJournal: Thank you for a great discussion and sharing your thought provoking ideas on training. Not only is hearing about another approach enlightening, I think our readers will also be able to use some of your approaches to helping beginners learn self defense when they approach their own friends and family. I appreciate all you've shared with us.

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The Truth About Stand Your Ground Laws

Arguments about stand your ground laws rose to fever-pitch in the wake of the Trayvon Martin shooting in Sanford, Florida. Various pundits, including unqualified members of the press, politicians and Federal officials, have made erroneous statements about such laws. The Network has fielded a lot of calls and emails on the topic and in response we would like to give our readers a little deeper perspective, not specifically on the Florida incident, but on the larger concept of the stand your ground law.

Network affiliated attorney Steven M. Harris agreed to help us understand these laws. Harris is a practicing attorney and member of The Florida Bar. His practice includes representing Federal law enforcement personnel in duty related matters, including use of force. He also assists other attorneys in civilian defensive force cases and provides pro bono assistance to law enforcement agencies and public information personnel on Florida use of force law. Our readers will recognize him as a frequent contributor to the Network eJournal's Attorney of the Month column. His writings on officer involved shootings (OIS) and investigations of civilian defensive shootings have appeared in Guns & Weapons For Law Enforcement and American COP. He is a guest lecturer for the Massad Ayoob Group.

Readers are cautioned that Mr. Harris's comments and analysis are for general information only, they are not intended, nor should they be relied upon, as legal advice applicable to any actual use of force situation.

eJournal: In the context of the law, what is meant by "stand your ground?"

Harris: The phrase "stand your ground" describes a state law which allows for the lawful use of defensive force against another without having a duty to attempt to retreat before using force. It is commonly said to be adjunct to or derived from the common law Castle Doctrine.

eJournal: How does the Castle Doctrine relate to the stand your ground concept?

Harris: The Castle Doctrine negates any requirement to retreat when attacked in one's own home.

The stand your ground law is in many states merely a spatial extension of the Castle Doctrine, that is, it extends the no-retreat principle from the residence to one or more of the following: temporary living quarters such as a hotel room or rented apartment; a garage or carport attached to a residence; business premises; an occupied vehicle. Some stand your ground laws expand the Castle Doctrine to any public place one is lawfully present, if not engaged in illegal activity.

eJournal: Do you believe expanding the Castle Doctrine to allow one to stand his or her ground in public places is appropriate?

Harris: I do. I believe restricting the no-retreat principle to one's "castle" is dated because it does not recognize modern lifestyles, the violent dangers that lurk in public spaces, and the difficulties in ascertaining while under attack how and when to retreat safely. This is especially true for persons who are old, infirm, or handicapped.

eJournal: Why do you think states enact stand your ground laws?

Harris: Stand your ground laws have become popular because in society today, analyzing the opportunity and ability to retreat, especially from multiple attackers, has become quite complicated, especially for infirm or handicapped individuals. Stand your ground laws are consistent with the timeless and unchallenged notion of innocent until proven guilty. A stand your ground law might also prevent a miscarriage of justice based on some trivial fact that could, but should not, defeat a self-defense claim in a given case.

I also believe stand your ground laws are enacted with domestic violence cases in mind and/or to level the playing field between law-abiding citizens who have employed deadly defensive force and misinformed or over-zealous police and prosecutors. The public and legislators rightfully observed that a person with a colorable self-defense claim should not be treated as a common criminal. A leveling of the playing field is deemed necessary because, as

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you know, the claim of defense of self or others is usually an affirmative defense that a defendant must prove to be acquitted.

eJournal: May I break in and ask for a legal definition of "colorable"?

Harris: I use the term to describe a self-defense claim that appears to be asserted in good faith based on existing state law and factually genuine at the time and scene of the incident.

eJournal: How many states have a stand your ground type law?

Harris: I have seen it reported in various places that enactments referred to as stand your ground now exist in 20 to 26 states. Several states have a pending stand your ground type law, and some stand your ground laws were recently rejected by state legislatures or governors. I have also read that several states are now considering amending or repealing their stand your ground provisions because of the tragic incident in Sanford, Florida.

eJournal: Aren't some limitations imposed by stand your ground laws?

Harris: Yes. Stand your ground statutes usually limit no-retreat use of defensive force situations to specified places where the user of such force is the intended victim of a violent crime. Moreover, except for situations where a stand your ground law establishes presumptions of the bad actor's lethal intent and the reasonableness of the victim's belief that deadly force is necessary, stand your ground type laws generally require force be met first with equal force, before resort to deadly force is justified.

In addition, the stand your ground defense is universally available only to otherwise completely law-abiding actors. Many stand your ground enactments disallow the use of stand your ground force to an initial aggressor and against a law enforcement officer. Some stand your ground statutes contain special provisions for residence cohabitants or related individuals. I do not believe any of the recently enacted stand your ground state laws override any preexisting state law that disallows the use of deadly force to protect property.

eJournal: We've heard stand your ground laws have been called a shoot-first license. Is that accurate?

Harris: No. I think the phrase came about because under some state stand your ground laws, a home invader or carjacker has a legally presumed lethal intent, and the innocent occupant who uses defensive force is relieved of the requirement to show a reasonable belief of imminent grave bodily harm or death. I think those provisions are tactically and legally sound.

eJournal: Do stand your ground laws give criminals a way to avoid punishment?

Harris: One of the biggest complaints about stand your ground laws by prosecutors is that bad guys like gang members assert the defense when they shoot each other. I am not troubled by that because in a courtroom the more asinine the defense you offer, the more likely you are to get convicted. Moreover, the exceptions contained in stand your ground statutes are almost always going to keep such defendants from asserting the stand your ground defense before a judge or jury.

eJournal: The Florida stand your ground law is the focus of intense national attention now because of the Trayvon Martin shooting. What are your thoughts on Florida's stand your ground law?

Harris: First, I must state that despite all of the media attention, I believe the stand your ground law actually plays little or no part in the Sanford, Florida case. The Florida stand your ground law is quite comprehensive. It was carefully drafted after due consideration and debate. It is not a shoot first law nor is it a make my day law because it applies to public spaces.

The Florida Supreme Court has ruled that a claim under the stand your ground law gets the defendant a pre-trial hearing where a trial judge rules on the defendant's immunity from prosecution. The state can appeal a dismissal of charges. I like the idea that a law-abiding citizen is not subjected to trial by fire before an inflamed jury if a reasoned analysis of the facts and correct application of the law dictate otherwise.

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Moreover, the stand your ground defense is not available in Florida to one determined to be an initial aggressor or criminal actor.

In addition to the stand your ground provision, the use of deadly force is justified and lawful in Florida to stop another from murdering you, committing any felony on or about your person or dwelling house you are in, and to stop the imminent commission of a forcible felony.

All of those situations do not require that one first attempt to retreat. In my opinion, rethinking or tweaking Florida's stand your ground law is not warranted. The only change I might recommend the legislature consider in light of the apparent concern that the stand your ground law breeds vigilantes, would be whether to explicitly limit the stand your ground defense only to situations of defense of self, one's immediate family, and others to whom a legal duty of protection is owed. Of course, that would discourage persons from aiding strangers.

eJournal: In general terms, what can you tell us about other state's stand your ground laws?

Harris: I am most familiar with my state, Florida, the first state to enact a comprehensive stand your ground law. I am familiar to a much lesser degree with the stand your ground enactments and retreat requirements of several other states. I have not compiled or analyzed how all 50 states statutes and cases treat justification, retreat, and stand your ground concepts. I have read the stand your ground enactments of about 15 states, and it does appear to me that Florida's is the most intricate and technical.

In my studies of some of the other state's enactments, I have noted that many states have no retreat and other provisions similar to Florida, covering situations like carjacking, air piracy, and home invasion specifically. Some narrow or expand the Florida stand your ground concept. Some states may allow no retreat only in defense of a narrower set of crimes (Michigan, which also requires that the reasonable belief that death or grave bodily harm is imminent to be honest, as well). Some states also include threats to use force as well as actual use of force (Georgia, Utah), and some have a less complicated formulation that simply negates a duty to retreat in all circumstances where the use of deadly force was lawful (Arizona, Georgia, and Indiana). Other states (Kentucky, Louisiana) have evidentiary presumptions similar to the Florida stand your ground enactment. Montana's version negates both the duty to retreat and the requirement to summon help from law enforcement before using lawful defensive force.

I think some state statutes have no mention of retreat, but that the duty, if any, is imposed by the common law of the state (Oregon, Washington, California). I note it is unclear in some states whether or not defense of others is a no-retreat, stand your ground situation. I found no stand your ground laws that provide a no-retreat rule in the defense of property.

I also note that some states consider retreat in a different light. For example, in New York the question of whether the defendant could have retreated in complete safety is the test, and the state must show that the defendant could have retreated in complete safety as part of the prosecution case. The question of retreat is not then part of what a defendant must prove as an affirmative defense. I believe California law is to the same effect.

In addition, about 15 states have adopted civil and/or criminal immunity provisions for someone who has lawfully used defensive force. Alabama and Oklahoma, like Florida, also have the provision barring an on-scene arrest unless there is probable cause.

A good source of information on a state's stand your ground, self defense and justification statutes is the state's pattern criminal jury instructions. They generally can be found on the Internet or in a state's loose-leaf criminal practice treatise.

eJournal: How important is the concept of retreat when one analyzes whether defensive use of force was lawfully employed?

Harris: I do not know offhand if anyone has compiled statistics reflecting how often retreat becomes the pivotal question when someone is prosecuted for use of force in defense of self or others. I suspect other factors come into play many times more often than the question of retreat. It seems to me, however, a strict requirement of retreat in all self defense or defense of others

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situations is inappropriate when the challenged user of defensive force was confronted with a criminal actor.

eJournal: Armed citizens often worry that after acting in self defense they will be arrested and detained while police seek out the facts of the case. Should stand your ground laws address that concern?

Harris: The law should discourage the on-scene arrest of a person who has a colorable claim to the lawful use of defensive force, who was not committing a crime before the incident and is not leaving the jurisdiction or a risk of flight. I favor the requirement that in such cases charges be brought by an impaneled grand jury, not filed by a prosecutor, who although well-meaning, may be unwittingly influenced by undue political or media pressures.

eJournal: Do you think the adoption of a stand your ground law significantly changes a state's law on justified use of force and self defense?

Harris: As to actual effect, I suspect few do. This is because of the various limitations I mentioned. In reality, I think most state stand your enactments, even those that expand the Castle Doctrine to all public places, will not affect the outcome of a self defense situation in the vast majority of cases.

Many state laws already allowed for the use of deadly force without retreat against a home or business premises invasion. I suppose with a claim of self-defense justification in an equivocal case where there are no eye witnesses, a stand your ground law might tip the result to the favor of the user of defensive force who might then not be charged with any crime. But that is entirely consistent with an esteemed hallmark of our criminal justice system which predates any stand your ground law by more than 100 years: Better that 10 guilty men go unpunished than one innocent man suffer. This is known as the guilty man maxim. I think the 10 to 1 principle is known as the Blackstone ratio. Some iterations of the saying go as high as 1,000 to 1. The maxim is found in the Bible beginning at Genesis 18:23.

eJournal: Do stand your ground laws affect self defense laws in other ways?

Harris: In some states, the stand your ground enactment includes other provisions, such as establishing legal presumptions of the malefactor and the defender for stand your ground self-defense claims in a home invasion or carjacking situation, immunity from arrest and prosecution, and compensation for erroneous prosecution of a person later vindicated or acquitted in a criminal case arising out of the use of defensive force. Some states have a provision that provides immunity from civil lawsuits when the person against whom force was used has been convicted of committing a crime at the time in question, or the user of defensive force has been determined to have been acting lawfully under the state's use of force laws.

Regardless of how any state's stand your ground and related enactments may affect self-defense law, I think the principle of when to use deadly force remains unchanged. That is, just because one may use deadly force doesn't always mean one should.

eJournal: I gather you do not view stand your ground laws as allowance to use deadly force as a first resort?

Harris: Except for situations where presumptions of intent are provided by a stand your ground law, such as in carjacking and home invasion provisions, I think it is expressly stated or implied that a person who stands his or her ground should first attempt to meet force with equal force, and then only if they reasonably believe they are in imminent danger of great bodily harm or death should they use deadly force. That, of course, is the basic law of self defense and is why I say the stand your ground laws, except for the no arrest and immunity provisions, may in actuality not change the law of self defense that much.

eJournal: Your perspective and understanding about stand your ground laws has given us many valuable insights. I know that the explanations you have given us will go far in helping armed citizens avoid taking actions that reach beyond the intent of stand your ground laws. I really appreciate the time you've taken to help us understand this issue.

Harris: My pleasure. I think the Network is an extraordinary undertaking with noble purpose, and I commend its founders, board, members and affiliates.

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

President's Message

by Marty Hayes

This month, I want to share with you the story of Douglas Burns. Doug is one of us, not a member of the Network, but a fellow armed citizen. At least he WAS an armed citizen until February 18, 1994, when he was assaulted by a man who stood over 6 feet tall and weighed over 300 pounds. Doug was, at the time, 5-6 and 140 pounds. According to the accounts I read about the incident and speaking to Doug, this is what occurred–

Doug had been in the same public place as the 300-pounder, minding his own business, when he and the 300-pounder crossed paths, and the 300-pounder told him "get the f*** out of my way" and slammed into him. Doug admits his mistake was telling the fellow that "there's no call for that" at which time the fellow came at him aggressively.

Disparity of force? Yes, it appears it was present. Previous assault? Yep. Was there a need to draw the firearm and warn the big bruiser to back off? In my playbook it was the logical choice. So, Burns first said, "Halt where you are, I am a licensed firearms owner." He had not drawn his firearm yet, but that warning didn't stop the fellow. When he did draw his firearm, the bruiser stopped in his tracks. Police were called, and someone went to jail. But, not the right someone! It was Doug who was hauled off to jail, prosecuted and ultimately convicted of assault. You see the big bruiser of whom Doug legitimately felt in fear was an off-duty sheriff's deputy. Hmmm, the plot thickens…

Doug, a calligrapher by trade, also lived in about the worse place on the planet for armed self defense: Massachusetts. The fact that he had a legitimate concealed carry license in Massachusetts speaks volumes for his character. I also know him to have been well trained to handle himself and his firearm, and nothing in the record indicates to me he did anything wrong. But, he had a sworn deputy sheriff as the chief witness against him, a guy who had a career to protect.

This event happened in a public place, with several uninvolved witnesses. When police arrived though, it is reported that the witnesses were told that they weren't needed and told to go away. Did I mention that the bruiser was a local deputy sheriff?

Two separate charges were filed against Doug, the first for simple assault, because apparently Doug had touched the bruiser at some point, and the second charge was felony assault with a firearm. No charges were filed against the off-duty deputy. Doug fired his first attorney who was unresponsive to his case, but by the time the second attorney came on board, the 9-1-1 tapes had apparently been erased. Even so, Doug was found innocent of the simple assault charge and was declared innocent by five out of six jurors on the felony assault charge, with the sixth juror refusing to vote because she didn't believe in firearms ownership.

Now, one would think that this would suffice to preclude a second prosecution, but remember this occurred in Boston. Doug was eventually prosecuted again and this time convicted of assault with a firearm, although attorneys in the courtroom contacted him immediately after the verdict and told him he had gotten a raw deal, and offered to help him with an appeal.

I could go on, giving separate accounts of the five different attorneys who have all worked on Doug's case and their ineffectiveness and incompetence to do anything meaningful for the guy. But, suffice it to say that I am convinced he got a raw deal, and continues to this day to get jerked around in whatever system of justice Massachusetts purports to have.

Doug contacted me several months ago when he was again looking for another appellate attorney to attempt to get his case reviewed by the Massachusetts Supreme Court. We talked about his case and I offered him a name or two of attorneys he could talk to, but another problem came up: he has run out of money to hire a good appellate attorney. With a felony record, it is also difficult to get work in his trade. Recently, he re-contacted me with some good news: he has found legal counsel to push forward the case to clear his name. Because I feel strongly about injustices such as the ones against Doug, I agreed to run his case

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by the members of the Network to see if we could collectively raise some money for him. I will be clicking on http://www.comm2a.org/component/content/article/98 to a non-profit foundation set up for assisting people like Doug in Massachusetts and I invite you to join me in helping Doug.

No, Mr. Hayes, You Cannot Testify

This month, I spent the better part of a week attending the self-defense trial of a retired gentleman. The details of the case are not important here. I had initially been asked to serve as an expert witness in the case, to talk to the jury about disparity of force issues and pre-attack indicators. But the judge did not allow me to testify, because he felt the defendant himself could adequately speak to these issues, and so they didn't need me. I frankly cannot argue with the ruling, but it drives home the importance of knowing such things yourself, and documenting your knowledge.

This trial and subsequent "non-verdict" also reinforced my earlier observations, made after the Larry Hickey trials that it is not just the acts of the defendant that are on trial, but also the larger concept of the armed lifestyle. I have no doubt that in the retiree's trial the jurors split 8-4 along ideological lines, not issues of evidence. I will have more thoughts for you on this topic at a later date.

If the retiree would have been a member of the Network who had viewed the Marc MacYoung DVD "Recognizing and Responding to Pre Attack Indicators" prior to the incident, I have no doubt this fair-minded judge would have allowed the DVD to be played for the jury. But even more likely, the case would have not gone to trial once the prosecution saw the DVD and knew that it would come in. For those of you who follow the Network Facebook page I mentioned that the jury was hung after the trial, with eight voting to acquit, and four voting guilty. A few days later, the prosecutor dismissed all charges against the individual prosecuted.

Libertarians Rock!

Lastly, it IS political season. Are you ready for six months of hate speech in the form of political ads? What is weird is that all the ads in the world are not going to matter one whit. If the presidential election was taken today (or at least as soon as the Republicans get done beating each other up), the election would turn out the same as it will on Election Day. I mean really, are people so stupid they haven't figured it out yet?

I was invited to speak to the Washington State Libertarian Party State Convention this past month, a first for me. They wanted me to come and talk about the Network! How cool is that? So, while the folks were eating lunch, I entertained them for half an hour talking about the state of prosecutions following armed self defense, and explaining what the Network does. I even had a former WA State Supreme Court Justice ask me a couple questions about our state's self defense laws!

Below: Hayes speaks about the Network during an address to the WA State Libertarian Convention.

I learned about the Libertarian Party a couple of decades ago, and even voted Libertarian in one presidential election. I sure like most of their platform and can live with what I don't like. I wish they could gain some traction and become a viable part of our political scene.

In closing, I hope to see many of you at the Network booth in St. Louis in a couple of weeks for the National Rifle Association's Annual Meeting. If you are going to be there on Saturday, be sure to come by and get an autographed photo of Massad Ayoob, or, at least take your own cell phone picture! Check in at our booth, number 231 for exact times and details. See you there!

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Please enjoy the next article.]

Affiliated Attorney Question of the Month

With the generous help of our Network Affiliated Attorneys, in this column we familiarize our members to our affiliated attorneys while demystifying aspects of the legal system for our readers.

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

We asked our affiliated attorneys: "Can you explain your state laws on displaying a weapon to stop an attacker? When does the law allow pointing a gun at an assailant during self defense?" Their answers were so many and so comprehensive that this column is the last in a series addressing this topic. We wrap it up this month, so watch for a fresh subject in May.

STEVEN HARRIS
Attorney at Law
P O Box 330849, Miami, FL 33233
305-350-9150
http://www.stevenmharrislaw.com/

Florida has two statutes that pertain to this affiliated attorney question. Fla. Stat. 790.10, on the books for many years, makes the "rude, threatening, careless, or angry exhibition" of a firearm "not in necessary self defense" a first degree misdemeanor. The accidental "flashing" by a concealed carry licensee is addressed by recently enacted Fla. Stat. 790.053, which provides that someone lawfully carrying a concealed firearm commits no crime if they briefly and openly display their firearm, unless displayed intentionally in an angry or threatening manner not in "necessary self defense." The interaction of the two statutes suggests that a holstered firearm may be intentionally displayed (if reasonable under the circumstances to do so) in order to stop the escalation of a threatening situation without violating the law. A caveat: It is not certain a judge or jury would apply these statutes to the defense of others.

Merely pointing a firearm at a threatening armed or unarmed person in defense of self or others is not the use of deadly force in Florida. If the action is considered reasonable in the circumstances, no assault crime is committed. The Florida Supreme Court has ruled that a person using lawful self defense is immune from prosecution and is therefore entitled to a pre-trial hearing on the issue in a criminal proceeding. If the judge determines the use of deadly force was lawful, the prosecution is dismissed.

Another caveat: The threat to use deadly force may not receive the same legal treatment as the actual use of deadly force. The Kansas Supreme Court has ruled that a person is not entitled to a self-defense jury instruction when charged with an assault crime (for verbally threatening deadly force) even when the actual use of such force might have been lawful and deserving of a self-defense instruction.

KEN WILLIS
Yorkshire Plaza Bldg., Ste. 103,
2200 E. 104th Ave.
Thornton, CO 80233
Admitted to practice in Wyoming and Colorado
kdwillis@comcast.net

If the research done by Gary Kleck of Florida State University is worth anything, and I believe it is worth quite a lot and has been duplicated and confirmed by others in his field, Americans use firearms to defend themselves from criminal attack somewhere between 1.5 and 3.0 million times in a given year. The stunning part of this research is that 95% or more of the time, no shots are fired. At the point where the gun is presented the criminal breaks off the attack and runs away. If this is an accurate reflection of what is happening out in the real world, a firearm for self defense is a useful tool for one's personal protection without having to pull the trigger, and a "no shots fired, nobody hurt" conclusion to a violent encounter will be considered by all reasonable men to have been the best possible outcome.

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Whether presentation of the weapon violates any laws, or more precisely stated, whether the presentation of the weapon is justified and is a complete defense to a charge of unlawful "brandishing," or "reckless endangering" as it is called in many states, depends upon the same analysis as if shots had been fired. Some states have enacted laws specifically stating that self defense is a defense to a charge of brandishing. I see those statutes as redundant. Self defense, if established, is a defense to any criminal charge for brandishing a gun. In most states the elements of a successful claim of self defense are generally as follows: A reasonable fear that you, or another person, are facing an imminent threat of death or serious bodily injury.

Bare fear is not enough. The test is both subjective and objective. One must actually be in fear, and it must be such that any reasonably prudent person, knowing what you knew at the time, would have been in that degree of fear under the same or similar circumstances. The threat must be imminent, i.e., in the next instant the threatened violence will occur if you don't act.

A real world example might help to illuminate how this works:

A beggar on the street asks you for money. You refuse and keep walking. The beggar follows you, haranguing you severely, calling you all sorts of filthy names. You tell him to leave you alone and that only angers him more. He tries to spit on you, and some of his spittle does land on your coat. You look at him carefully as you back away from him, trying to keep as much distance as possible. You do not see any sort of weapon, either knife or gun or anything he might use to bludgeon you. Nor is he substantially bigger that you. He does not appear to be physically fit such that he could easily overpower you. You do feel a great deal of fear; this is not the sort of thing you are used to. But you are not reasonably in fear of death or serious bodily injury at this point.

You must keep your firearm concealed because you have other options at this point. If you have your cell phone with you (and you should never be without a cell phone when you are armed) you can dial 911. If your cell phone has been made in the last two or three years, the 911 dispatcher will have a fairly close idea of your location as soon as your call connects. As soon as 911 answers, start the conversation with your exact location.

Since you will always be in condition yellow when armed, this will be easy for you because condition yellow means you know where you are at all times. Next give your name and a brief description of the situation, that an aggressive street panhandler is following you and spitting at you and you are worried that he may become violent.

Always be aware that every word you say becomes an instant permanent record. Don't do like one of my former clients who blurted out to the 911 operator, "I can just shoot him down can't I?" Prosecutors are like the rest of us, they like it when someone makes it easy for them. This statement was used in court in an attempt to show that the citizen was out looking for trouble.

Now let's change the above facts just a bit. Suppose when you turn to look at the panhandler as his spittle is flying around you, and you see that in his right hand, which is down at his side at this point, he holds a knife that appears to be a Swiss Army knife and the blade is open. You know from experience that although the blade is only three inches long, it is very sharp. You've used yours to open boxes UPS has left for you and it works very well. You know that human skin and flesh surrenders to the sharpness of its blade even easier than corrugated cardboard. You also know something else that is vitally important and that knowledge raises your level of fear. In fact, it is that knowledge that scares the holy crap out of you. You know all about the Tueller drill. (If you've never heard of the Tueller drill stop carrying your firearm and immediately go take a class from a competent firearms instructor who will demonstrate it for you so if need be you can prove that you have received this training.) Assuming you do know about the Tueller drill, you know that you are in mortal danger at this point. Time to put Gary Kleck's findings to the test. You will be justified almost anywhere in this country (but not in many others) in presenting your firearm and shouting in your loudest command voice at this panhandling cretin, "DROP THAT KNIFE NOW!!"

This verbal feat helps you in three ways. First, maybe he will drop the knife and run away, or maybe he'll keep the knife but still run away from you. If he drops the knife that is most good, but

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either is good. Let him go. Don't chase him. If the knife remains on the scene, don't touch it. It's evidence. Point it out to the police when they arrive.

Second, if someone else on the street who hasn't taken too much notice up until now sees your gun come out pointed at the panhandler, and makes their own call to 911 to report a "man with a gun," your shout may also have been heard by that witness as well as others and that will help you. Third, your shout out will help any witnesses better understand what just happened and make it more likely they will remember the incident more favorably to your position–that you were presented with a deadly threat and reacted reasonably.

These facts could be changed in other ways. Assume the panhandler is a very big guy who appears to be both strong and a bit deranged. He's menacing you and you are a small woman: you weigh 130 pounds. He's at least six feet tall and looks to go about 250 pounds (even though he's panhandling money for food). He doesn't necessarily need to show you a knife to put you in mortal fear. The disparity of strength and force is enough. Or suppose you are about the same size as the panhandler but you're a 67-year old geezer like me with so many aches and pains you move slowly and an old leg injury prevents you from attaining more that a brisk walk in any event. Again, disparity of strength, agility and force can justify a different response than if the disparity were reversed. Finally, assume two or three panhandlers instead of just one. Different facts and a different response may be reasonable.

There are a few other things about self-defense law that you must know and remember. Nearly everywhere you will lose your right to claim self defense if you were the "initial aggressor." You may recall being on the school playground when you were a child and you and Johnny got into a fight. Your teacher may have grabbed both of you by the ear and said something like, "I don't care who started it!" You're not a child anymore and this is not a playground. The law does care who started it, and if that was you, forget about a successful self-defense claim.

Closely related to "initial aggressor" analysis is "mutual combat." You and another person get into a fist fight. The law considers both participants to be initial aggressors. Neither can claim self defense in that situation. It's the classic case where the loser goes to the hospital and the winner goes to jail.

Some jurisdictions impose a duty to retreat before using deadly force in self defense. There are fewer and fewer of those, but you must know the law of the state you happen to be in when your violent attack occurs. Even if there is a duty to retreat, it won't apply in your home (or hotel room, or tent, or in your RV when it is parked for the night and you are using it as a home and not as a vehicle). A duty to retreat is also limited to those situations where you can safely retreat. If there is no place of safety for you to retreat to, you can't be expected to do it. In our example above, you were on a public street and you were backing away from the attacker, telling him to drop the knife. Your knowledge of the Tueller drill made it clear to you there was no place to go where you would be safe. Thus, even in a state where a duty to retreat exists, you have no such duty in this instance.

The reason I've harped on your previous knowledge of the Tueller drill is because in most jurisdictions, if you didn't know it at the crucial time it cannot have formed a basis for your fear and you probably won't be allowed to rely on it in a later court case. It will be deemed irrelevant under the rules of evidence. Even if you learned all about it later, you probably won't be able to use it to justify your actions at a time when you didn't know it.

Finally, self defense is an affirmative defense. It is in the nature of "confession and avoidance." You shot a man and he died. You are charged with murder. A claim of self defense says, "Yes, I shot the man and he died as a result of my shooting him. While that would, in other circumstances, justify the charge of murder that has been brought against me, it's not so in this case because I was justified in shooting him. He was trying to kill me."

Now that raises the question of who has the burden of proof on your claim of self defense. Since it is an affirmative defense, it may seem that you have the burden of proof, sometimes called the burden of non-persuasion. In a civil case of wrongful death brought against you by the dead man's family, you would definitely have the burden to prove that you were acting in self defense. That's because in a civil case the general burden of proof is proof by a preponderance of the evidence.

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In other words, if either side can merely show that their version of events is more likely to be the truth of the matter than the other sides' version, they win. Even if it's a close case, and it's only a little bit more likely. There can be all sorts of doubts, but if on balance, one side has the better case, that side wins.

In a criminal case it's much different because the prosecution has the burden to prove guilt beyond a reasonable doubt. If there has been any credible evidence of self defense admitted into the case, that will raise a reasonable doubt unless the prosecution disproves it. That's right, the prosecution has the burden to prove a negative, always hard to do. However, that is only if some credible evidence has been introduced in the case. That evidence will have to come from you, the defendant. The prosecutor has no obligation to introduce such evidence even if he (or more likely, she) knows it exists (she does have an obligation to reveal to defense counsel all exculpatory evidence known to her).

So, even though you do not have the ultimate burden of proof on your claim of self defense, you do have the initial burden of going forward with some credible evidence which, if believed, will establish your claim. At that point you have saddled the prosecutor with the burden of proving it was not self defense. Cool.

There may be some states that still put the burden of proof of self defense on the defendant in a criminal case. Arizona used to do that, but recently changed their law. This was a problem for Harold Fish after he shot Grant Kuenzli in self defense in the national forest near Payson, Arizona in 2004. I believe states that still cling to that principle are ripe for a constitutional claim on that, but that's not what you want. Harold Fish was eventually exonerated but his life savings are gone, he spent time in prison, and his life is probably still in wreckage.

I'm admitted in Colorado and Wyoming. Colorado's self-defense law is by statute, C.R.S. Sec. 18-1-704. Wyoming has a statute on self defense that applies only in the home, and self-defense law outside the home in Wyoming is based on the common law as established by decisions of the Wyoming Supreme Court. The law of both states is essentially the same except the statute in Colorado provides that even when deadly force would otherwise be justified, the actor must reasonably believe that a lesser force would be inadequate. Your guess is as good as mine as to what that means. It clearly does not mean there is a duty to retreat.

The Colorado Supreme Court has been clear since 1876 that there is no duty to retreat in Colorado. The Wyoming Supreme Court has not been as clear. They say that a defender has the duty to take all reasonable steps to avoid a violent encounter, and that may include a duty to retreat. Whether there is a duty to retreat in a particular case depends upon all of the facts and circumstances of the case. To that I say, "Gee, thanks guys. That really tells us a lot. Can we call you up, even if you're in bed, and get your thinking on this. The guy has a knife, he's been spitting at me, I asked him to leave me alone, he looks awfully menacing, do I have to run? What if he chases me and stabs me in the back? Couldn't you guys have been a little more clear on this in all those other cases? I don't know what I'm supposed to do here!"

Well, sorry I can't give you the personal phone number for the Chief Justice of the Wyoming Supreme Court, but I also can't tell you how else you'll ever know what you're supposed to do. Here's one thing that might help. Whether it's required by law or not, you always should retreat if you can do so safely. If it works it might save you from writing large checks to lawyers, and maybe having to get another mortgage on your house.

One thing one should always expect in Wyoming is that because of the uncertainty in the law the prosecutor will almost always request the trial judge to give a duty to retreat instruction to the jury in every case where a self-defense instruction is given. You must have a lawyer on your side who knows how to argue against that. You don't want the jury to get that instruction. In any group of 12 people they won't all agree on what the evidence they just heard in court adds up to, and a self-defense instruction gives those jurors who are a little squeamish about what you did a powerful way to argue with the other jurors. It can make the difference between a guilty or not guilty verdict. That's why the prosecutor wants it!

The Wyoming Supreme Court is the highest court in the Cowboy State, the state that reveres cowboy values of self reliance and independence.

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It should come out next chance it gets and state unequivocally that there is no duty to retreat from a contemptible scumbag intending to rain death on you. But until they do, you have to deal with things as they are in the Cowboy State.

Last point: A criminal that breaks off the attack and runs away when you present your firearm may stop running as soon as he reaches his place of safety. At that point he may turn around and start shooting at you or he may sneak back and stalk you. For that reason, don't make the mistake of thinking it's over as soon as he runs away. It might not be over, so you should immediately seek cover, i.e., something that will stop his bullets. A brick wall, the engine block of a car, etc. And you should call 911 (always have a cell phone when armed) to report that you were attacked, you thought you would be killed, you defended yourself with your lawfully-carried firearm, no shots were fired, the criminal has left the area. Always get law enforcement involved when you have used your firearm in self defense, even if no shots were fired. If the criminal doesn't come back to try and hurt you, he may call 911 himself to make an anonymous report of "a man with a gun." The police will be at your location quickly in that case, and you'll have a harder time explaining what happened. You'll be nervous and under stress. You'll probably say something you shouldn't. The first one to call 911 is the victim, the one who doesn't call is the perp. Don't give a criminal the chance to turn that around on you.

Conclusion: If your self-defense claim fails and you end up guilty of "brandishing" or "reckless endangering" or whatever they call it wherever you are, know that the laws among states differ widely on this. For example, reckless endangering is a misdemeanor in Wyoming and Colorado. In Florida it's a felony with a mandatory three-year prison term. No judge has discretion on it. If convicted you will serve that time. You will lose your firearm rights for life. The only thing that would get you out of it is a pardon from the governor.

I'm old and decrepit and don't actively practice law anymore. I do give a talk to groups of interested people from time to time on "Navigating the Legal Minefields of Armed Self Defense." It usually takes three to four hours for me to cover most of the bases on this. The absolute best person in America to give this talk would be Massad Ayoob. He's not a lawyer but clearly knows more law in this area than most lawyers. I think I might not be as good as Mas, either on the law or the realities of gun fights, in fact I'm sure I not, but I have taken two of his Lethal Force Institute classes, as well as several others at Gunsite that enable me to put the legal analysis into a realistic context. I hope I succeeded on that here.

As always, with regard to a specific matter in which you may be involved you must consult with your own legal counsel for advice; do not under any circumstances try to substitute what I have said here for legal advice particular to you or any specific incident.

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We deeply appreciate the contributions our affiliated attorneys make to the Network, including their assistance with this column and especially these final responses to what turned into a very lengthy discussion, which we feel wraps up the topic very nicely. Contact information for our Network affiliated attorneys is http://www.armedcitizensnetwork.org/affiliates/attorneys. Member log in required.

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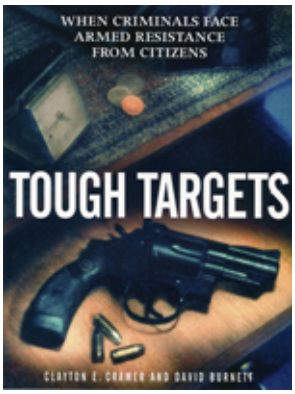
Please enjoy the next article.]

Book Review

Tough Targets



By Clayton Cramer and David Burnett
Published by CATO Institute
1000 Massachusetts Ave. N.W., Washington, D.C. 20001
800-767-1241
http://www.cato.org/publications/white-paper/tough-targets-when-criminals-face-armed-resistance-citizens

Reviewed by Gila Hayes

Clayton Cramer has become rightly famous these past decades for tracking news reports on citizens using guns in self defense. His white paper written with David Burnett for the CATO Institute, follows that same vein, quantifying defensive gun uses and explaining how public opinion is so often skewed by a prejudiced media and studies that either do not uncover the facts or twist them to affirm a popular conclusion.

In this white paper, Cramer and Burnett cite various studies and recognize the fallibility of surveys that try to determine the numbers of defensive gun uses. Sometimes the truth is lost because of something as simple as an interview question posed thus: "Within the past 12 months, have you..." to which the crime victim, the incident still looming large in memory, gives a report of an event that happened further in the past. Likewise, asked if they were a crime victim, the man or woman who used a gun to stop a criminal may answer, "No," believing that since they prevailed they were not victimized.

To further complicate reliability of the many studies on this topic, crime reports may be based on initial charges but adjudication can take months or years. "If police investigate a homicide and ask the district attorney to charge someone with murder or manslaughter, that is reported as a murder or manslaughter to the Uniform Crime Reports (UCR) program. But district attorneys will often investigate a case in the weeks afterward, find evidence that the killing was justifiable or excusable homicide, and drop the case entirely," the authors detail. Finally, how ever could anyone get an accurate count of all the times when shooting was not necessary and the armed citizen failed to make a report?

When Clayton Cramer began collecting data about defensive gun uses, instead of surveying he turned to anecdotal news reports, which he gathered between October 2003 and November 2011. Here, the only downside is the mainstream media's reluctance to report anything but gun-related atrocities, a factor the authors quickly acknowledge, though inaccuracies occur in studies from both sides of the gun control/gun rights issue.

The reports Cramer collected numbered nearly 5,000 and, as the authors explain, the stories included a lot more detail about "circumstances, victims, and criminals" than one can gather from the UCRs.

Returning to the theme that defensive gun uses are relatively common owing to defense-friendly laws, the authors next include an interesting commentary and historical perspective on state laws about concealed carry, the Castle Doctrine and stand-your-ground laws, and how they bear on citizens defending themselves. With defenses in the home comprising a big part of the defensive gun uses studied, the authors give considerable discussion to the idea of Castle Doctrines, one's right to defend self and family inside the home, and how this applies to residential burglaries and home invasions.

"Who uses guns in defense?" the authors ask next, though the discussion is broader, also inquiring into circumstances, which range from car jacking, sexual assault, robbery, and home invasions. A section on disarming attempts is included in which who disarms whom proves quite interesting. In a supplementary interview posted on the Cato Institute http://www.cato.org/guns-and-self-defense/, Cramer dryly notes, "Usually it was not the victim who had the gun taken away from them. The gun taken away from you thing is actually more of a problem for criminals it seems, than for the victims." The other comments about his study included in this podcast-style interview make interesting listening, too. The same website has a supporting map graphic and a link to a podcast about Tough Targets and all are useful resources.

The second half of the white paper *Tough Targets* is an extensive series of vignettes drawn from news reports of defensive gun uses. If you turn first to the Armed Citizen column in your NRA membership magazine, you'll like this part of *Tough Targets*, too. Go to the website cited above to either purchase the printed copy we reviewed or read a downloadable version.

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

Networking

by Brady Wright

By the time you read this, I'll be back from a life changing experience. While it is not as exciting as a five-day tactical training course or a combination hunting and camera safari might be, it will have even longer-lasting consequences. On March 18th, I got married and spent a week in Hawaii with the new missus. And even though I will now be giving up some closet space, the exchange is that I will have my best friend with me as life goes on. Couldn't be happier.

Over the last month, the chatter from our affiliates and instructors is as busy and inspiring as ever. I heard from our friend Phil Smith on the East Coast. His travels take him to many different locales on business and he always makes time to stop at gun shops, ranges, shooting clubs and sporting goods stores to spread the word about the Network. I am seriously recommending him for the "Johnny Appleseed" award! I could easily fill a column with his stories and meetings alone.

Another unpaid, but highly appreciated agent for our cause is Nathan Zeliff at Shasta Defense. He teaches a full 20-hour initial CCW course and renewal courses, where he distributes our booklet What Every Gun Owner Needs to Know About Self-Defense Law. He also includes our membership application materials and references our DVD on threat recognition factors. Nathan told me, "I am looking forward to the DVD on what I understand will be an update on the Tueller drill (which full course students do live fire, recording their time, results, and their conclusion on whether they lived or not). Your Hickey case article is also included in my full course materials." Nathan teaches a full schedule of offerings and you can find out all about his expertise at http://www.ShastaDefense.com.

Bill Maravelas makes presentations to a variety of students and his materials also include Network information. He says, "I have a supply of your 24 page booklet that I distribute during my classes." Steve Eichelberger and Jesse Lawn of CQC Solutions will be presenting their *Threat Management for Personal Defense* series of three two-hour classes at Blackwater Tactical (503-588-2635). These classes build on use of force principles and include hands-on physical scenarios for you to test those principles. The series is currently running, so you can't get in on all of them, but contact Steve and he can tell you when they will re-run the classes, which are well worth the time. The titles are: Managing Threats, Managing Lethal Threats, and Manage Any Threat With What You Have. Blackwater Tactical is at 1185 12th St. SE, Salem.

One of our Network instructors from Oregon, Wolfgang, has this story to share. "A few weeks ago, my brother had a burglary at his home, but he was not there at the time. He was concerned regarding how he should react if he were at home and started into the usual "drag 'em inside" scenario. I quickly talked him out of any ideas of evidence tampering and sent him one of your pamphlets the next day. He just got it today. I will try to remember to let you know what he thought of the content when he has a chance to read it. It's been a real eye-opener to everyone who's read it as far as I can tell. Thanks again and keep up the good work!" Wolfgang, we are honored to have folks like you helping to get solid information out to people who need it. Even long-time gun owners and CCW veterans can use additional, current information about the potential consequences of any actions a person might take before, during or after a defensive shooting incident. Keeping people informed–and SAFE–is what we are about.

April is the time for the annual NRA meeting and the Network will be there in St. Louis to meet and greet all our friends, old and new! If you have plans to attend, stop by and say "Hi." We'll have plenty of time to share the current state of the Network and we are all pretty excited about the growth over the last year. As you may know, we broke the 5,000-member barrier a little while ago and there are no signs of membership applications slowing down. The Armed Citizens' Legal Defense Network is the absolute best value of any of the defensive protection products out there, in my humble opinion, and I'm proud to be a small part of it.

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Please enjoy the next article.]

Editor's Notebook

by Gila Hayes

The shooting of a young black man by a community watch volunteer in Florida raises as much concern among armed citizens as it does among those bent on painting the shooting as racial injustice or as a hate crime. The Network has received numerous queries from members about the situation, especially in light of the implications immediately raised in the news media about the role of Florida's stand your ground law in justifying the shooting.

While we'll not comment on any of that at this time, the Florida issue, along with the brouhaha raised with Indiana Governor Mitch Daniels' signing of SB1 earlier in March, stirred recollections in my mind of a paper in the American Journal of Criminal Law that I'd run across some years ago. The paper is just 10 ½ pages, plus extensive footnotes, in which its author, David B. Kopel, summarizes nine cases argued before the Supreme Court in the late 1890s that comprise the foundation of many of the arguments supporting armed self defense today.

The paper, copyrighted in 2000, focuses on how one Supreme Court counteracted judicial activism. When I returned to review the paper this week, I felt surprise all over again at how the issues before the Court then are so much the same in principle as those we worry about today. The right to stand your ground when attacked where you have the right to be, cases with racial elements, a furtive movement shooting, and in Starr v. United States, the question of whether resistance is legal in circumstances where it is not clear that the aggressor is a peace officer. The latter is so very interesting in light of the Indiana's Senate Bill 1, legislation that some are saying reads "nearly word for word" like a Castle Doctrine, that has also spawned a lot of warnings from IN law enforcement concerned that it will be seen as encouraging resistance (See footnote 1).

With so many current events of concern to our self-defense rights, why are some dusty old Supreme Court cases important? First, a bit of history: author Kopel explains in this paper that the nine cases he summarizes represent ones in which the Supreme Court took steps to moderate "hanging judge" Isaac C. Parker, a jurist infamous for extremely lengthy and often over-reaching jury instructions from his Western District of Arkansas bench. Kopel's paper explains that the Supreme Court eventually overthrew 31 of Parker's 44 capital cases appealed to them, though that is only half of the 88 sentences of hanging for which Parker is remembered.

An iron judge for a lawless region? One might be tempted to support Judge Parker's brand of law and order, but Kopel points out that Parker's decisions "forced juries to bring in guilty verdicts against people who were defending themselves against criminal attack." Likewise today, with much of America's armed citizenry firmly in the "law and order" camp, I think we must constantly ask if tools used against crime will not someday be used to infringe on rights of armed citizens.

Among the plaintiffs in the appeals Kopel cites are the minorities of the day: immigrant Poles, Cherokee Indians, a black youth, a man of mixed Indian and white blood, and, yes, whites, as well. Despite indications that the Supreme Court, like the nation of that time, was racist to the core, the Justices held the right to self defense in higher regard. Some of the first gun control laws were enacted to prevent freed slaves from possessing firearms, yet that Court established precedent in these self-defense cases from which we still benefit today, and they did so without regard for the race of the defendant.

One recurring theme is Judge Parker's jury instructions in several cases in which he considered carrying a handgun indicative of premeditation to kill. Whether or not the defendant failed in not retreating from his attacker, both while on one's own property as well as in public is another common theme in these cases. Another asks if withdrawing from a confrontation restores the right to use force in self defense, and one challenges the idea that fleeing implies guilt. Explaining the import of these cases, Kopel writes that these cases "were based on issues that went to the core of guilt or innocence."

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I find them instructive because they teach principles still in place today. To gain perspective on current problems like the Florida shooting, we desperately need to understand the foundations of our system of law. Kopel's paper is available for your detailed study at http://www.davekopel.com/2A/LawRev/Self-Defense-Cases.htm

If anything good comes from the intense scrutiny Florida's stand your ground law is currently enduring, it may be that armed citizens who might take action based on their belief of what that law–or others similar to it–allows might now stop and try to learn what is actually permitted.

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Footnotes:

1 This point wanders somewhat off topic, but makes for interesting reading. If interested you can follow up on it for yourself at these links, to choose only a few:
http://www.indystar.com/article/20120322/LOCAL/203220345/Indiana-police-fear-state-s-new-right-resist-law

http://advanceindiana.blogspot.com/2011/09/supreme-court-holds-firm-on-barnes-v.html

http://www.lris.com/2012/03/22/indiana-police-fear-states-new-right-to-resist-law/

http://www.nraila.org/legislation/state-legislation/2012/03/indiana-governor-mitch-daniels-signs-law-upholding-us-and-indiana-constitutions.aspx?s=indiana police&st=&ps=

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