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"The 7 Things You Must Know Before You Draw Your Gun."
March 2011

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THE 7 THINGS YOU MUST KNOW BEFORE YOU DRAW YOUR GUN

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THE 7 THINGS YOU MUST KNOW BEFORE YOU DRAW YOUR GUN

INTRODUCTION

By Patrick Kilchermann
United States Concealed Carry Association

When I was asked to create the report called ‘The 7 Things You Must Know Before Drawing Your Gun’, about a thousand critical thoughts flooded my mind.

“First of all”, I remember saying, “There are far more than seven things that anybody needs to know before they draw their gun. In fact, there are probably seven hundred.”

My fellow USCCA Staff member replied, “I know that... you know that. Hell, most of our 56,000 members know that. But Pat, this report is going to be circulated into some pretty distant circles of people. Not all of them are going to have dedicated as much thought to carrying concealed as the average USCCA member.”

What could I say; my friend had a great point. So, I set out to form a collection of some of the best advice that I could find, and I swear to you, I tried to limit my findings to the seven things that you MUST know before carrying concealed- as advertised in the title to this report.

Try as I could, I missed the mark. I am giving you EIGHT things... eight things that you absolutely must know before drawing your gun in a self-defense situation.

Okay, before we begin, let’s talk bluntly for a moment. The fact of the matter is that carrying a concealed handgun for self protection is NOT something you should take lightly, and here’s why: There are rights at stake, and there are lives at stake.

Rights. We all believe in the fundamental human right of a law-abiding citizen to keep, and to bear arms. I happen to believe this is a universal human right, not limited to Americans, but very few other places in the world recognize it. Regardless, we have the right. Despite my beliefs, and despite what the founders of this constitutional republic determined long before my time to be correct, many jurisdictions in the USA have decided that they have the authority to override the constitution, eliminating our right to keep and bear arms.

As folks who carry concealed, we are on the front lines of the Second Amendment, and we owe it to the founding fathers, and

to our great-grand-children’s generation to be constantly proving to our fellow Americans that gun owners are the most responsible group of people our country has. If we do this... I am confident that we’ll never lose our constitutionally guaranteed right to keep and bear arms.

Lives. Any time you venture into public with a self defense firearm at your side, you are putting lives in danger. They may be criminal lives, it may be your own life, or they may be innocent lives. Your sidearm and its ammunition place an incredible burden of responsibility on your shoulders. Every decision you make has to take that responsibility into consideration.

I am not trying to frighten anyone, and I’m sure that most of the people reading this will have heard the above message many times. This immense burden of responsibility is why carrying concealed works. That responsibility is why violent felons fear responsibly armed citizens more than they fear armed police officers.

It is a GOOD responsibility, and if it seems a bit daunting to you... well, that’s a good thing. In all my years of being part of the USCCA, having watched tens of thousands of people join our Association, I’ve never seen anybody take this responsibility lightly- at least not after the first time they holster their gun.

As intimidating as it can be, holstering your pistol for the first time, being forced to draw it and defend yourself is at least a thousand times heavier of a choice. If you’re drawing, it’s because someone is about to do you great bodily harm. You’re backed into a corner, and you have to choose between succumbing to the wills of a killer, or to defend yourself.

This is the ultimate lose-lose situation, and as the responsible, innocent citizen- the victim- it is you who has the most to lose.

At the moment when your life is threatened, you will have about a thousand decisions to make. The problem is, you’ll only have time to make two of them- three if you’re very well trained.

The solution then, is to make the other 998 decisions before this moment of truth. And that, friends, is the purpose of this report.

Before you begin reading, please make me one promise. Please make this promise to your friends, to your family, to your great-grand-children, to yourself, to the 56,000 members of the USCCA, to the founding fathers of this country, and the thousands

of people you will encounter as you go about your days with your sidearm locked and loaded on your hip (or under your coat, or in your pocket, or on your ankle!): Promise me... Promise all of us that if this material is NEW to you, you will make this report the BEGINNING of your journey toward responsibly carrying a concealed weapon for self defense.

I now give you, the 7 8 things that you absolutely must know before you draw your weapon.

-Patrick Kilchermann, USCCA



ASKING THE RIGHT QUESTION: “WHEN DO I HAVE TO SHOOT?”

by Don Stahlnecker

When it comes to self defense, I find that people are always asking the wrong question. People always want to know, “When can I shoot?” Now, I’m not saying that is a bad question. I’m only saying that there is a much better question, a much more appropriate question to be asked. Yet I have never heard it. Perhaps I never will. But I hold out hope that instead some day I will hear someone ask, “When do I *have to* shoot?”

Here’s why.



An armchair quarterback can calmly spend ten minutes contemplating a situation that happened violently in fewer than two seconds.

It is decisive

It is easy for the armchair quarterback to scrutinize a deadly encounter reported in the news and describe some superior course of action the victims should have taken. This is because the armchair quarterback is in a relaxed, contemplative environment where his thinking skills are at their best. He can calmly spend ten minutes contemplating a situation that happened violently in fewer than two seconds. His proposals are probably even correct. However, it is very unlikely that he could achieve that same well thought out course of action if he tried to do so while actively in the middle of that same violent event.

The key to dealing with a high speed, high stress situation is to have a solid course of action planned ahead of time. Asking, “When can I shoot?” is indeed part of making that plan. But “When can I shoot?” does not help answer the question, “Should I shoot?” The fact that you *can* do something does not mean that you *should* do it, nor does the fact that you are not supposed to do something necessarily mean that you should not. There are other factors to take into consideration, and if the goal is to have a course of action planned out ahead of time, simply knowing what you are *allowed to do* is a bit short of the goal of knowing exactly what you *need to do*. In contrast, the answer to the question, “When do I have to shoot?” is far more decisive. If, in any situation, the answer to that question is yes, then no more debate or consideration is necessary. There is only one thing to do. You must shoot!

It is flexible

Some will reject my argument as superfluous and assert, “When you *can* shoot, you *will* shoot.” But such a strategy limits one’s course of action since *can* will now always be interpreted as *must*. Suppose a hypothetical person named Tom is woken at three in the morning by a cacophony which instinct tells him means serious trouble. He jumps up and peeks out of his window just in time to see his girlfriend’s drunk and abusive ex-husband approaching his house carrying a rifle. Can Tom shoot the murderous ex to defend his own life? Of course. So, knowing that the ex means business, Tom retrieves his shotgun and prepares for the confrontation. This course of action is dictated by *can* equals *will*. But there may be other options Tom could, and probably should consider.

It is tactically sound

Implicit in the question, “When do I have to shoot?” is the idea that you are going to avoid shooting whenever possible--which is good, because avoidance is almost always the best course of action, both during the encounter and for the legal battle after the encounter. Our hypothetical Tom is about to be in a shootout, and the problem is that a shootout always entails a high level of risk. For the shooting to be justified, Tom’s own life must be in danger. To put it bluntly, the aggressor will have the same opportunity to shoot Tom as Tom has to shoot the aggressor. And regrettably, one very likely outcome of a gunfight is that both participants will end up killing each other. If we acknowledge that Tom’s primary goal

is to stay alive and, even better, uninjured, then we must note that Tom's odds are not good in a shootout. But if Tom was able to contrive such an advantage in this gun fight, if he found a way to give himself such an upperhand that he could shoot the aggressor without any real risk to himself, then Tom would be at risk from the legal system which will have to wonder, "If you were in such a position of safety, if you were not in danger, why did you have to shoot?" Either way, this course of action leaves Tom at great risk.

A solid principle of tactics is to follow the course of action which accomplishes the goal with minimal risk. If Tom instead snuck out the back door or even jumped out of his bedroom window and ran away, his odds of survival would have been substantially higher and the consequences of the aftermath substantially lower.

Admittedly not all encounters have a safe solution such as the one I offer Tom, and sometimes the answer to the question, "Do I have to shoot?" is yes. In those situations, shooting is the tactically sound thing to do. But a good tactician will consider all the options, not just those which involve shooting.

It is pertinent

When people ask, "When can I shoot?" they are asking about the law; when is it legal to shoot, or will I get in trouble if I shoot in this situation? Those are good and important questions to consider, for certainly your situation is not much improved if you jump out of the frying pan only to land in the fire. On the other hand, what good do you gain by burning in the fire for fear of the frying pan?

At the moment when you are in the middle of a deadly encounter, questions of legal liability are not your highest priority. Nor is the law terribly helpful at carrying you alive through a deadly encounter. Nowhere does the law tell you when you must shoot someone. Ordinary citizens are never legally required to defend themselves or others. So while "When can I shoot?" helps with the aftermath, "When must I shoot?" is directly pertinent to surviving the problem at hand.

It is legally safe

In fact, "When must I shoot?" is pertinent to both the problem at hand, and to the aftermath. While I do strongly recommend that everyone become familiar with their local laws regarding justifiable homicide, I can pretty much guarantee that "have to shoot" is almost universally safe. If there were no other reasonable options either leading up to the event or during the event itself that could have avoided the problem, and if the only course of action you had to save yourself or another from death or grave bodily harm was to counter with deadly force, then you are almost guaranteed amnesty from the law. In all states and even in most countries, the law recognizes that people have a right to defend themselves and that deadly force is sometimes the only means to that end.

Despite how it might seem at times, the law makers do not just arbitrarily decide what is and what is not justifiable homicide. Instead they consider under what circumstances a person might be compelled to use deadly force to protect themselves and they attempt to write the laws accordingly. In other words, the law makers themselves ask the question, "When does someone have to kill?" and almost everywhere in the world they make allowance for this. Therefore, when we consider "When do I have to shoot?" we are asking practically the same question the lawmakers asked when they decided when it was permissible to shoot.

It is morally correct

Above, and perhaps outside, the scope of the legal issue is the moral issue. There is a suggestion in "When can I shoot?" of anticipation and desire. Like you've got your finger on the trigger just waiting, hoping for the "can shoot" light to turn green. In contrast, "When do I have to shoot?" expresses distaste for, but acceptance of, the necessity to sometimes take another life.

However, I won't waste much time here because I do not believe that the vast majority of people are just waiting and hoping for an opportunity to shoot someone, no matter how they phrase the question. What is more important than the moral correctness of the question is the fact that...

It is technically correct

This is important because the text of the question will determine one's satisfaction with the answer. When someone asks, "When can I shoot?" they probably really want to know all of the issues and implications surrounding the topic. But if all they receive is a short dissertation on the law, they will feel satisfied with an inadequate answer. But if instead they ask, "When do I have to shoot?" and all they get is a short dissertation on the law, they will know they've been short changed, and that the question has not been fully answered. They will be inspired to look harder, to search deeper, and to learn more. And I believe that the more a person knows, the safer they will be.

Don Stahlnecker earns his living as a computer programmer but he is also a student of Danzan Ryu Jujitsu and a certified instructor at the Firearms Academy of Seattle. Living in Washington state, Don has been involved in teaching self defense tactics and techniques since 2003.



DON'T SHOOT! TRAINING FOR THE DRAW IS JUST AS EFFECTIVE

by Kevin Michalowski

Carrying a concealed handgun puts you at a decided advantage in a self-defense situation. Yet, this advantage carries only as far as your training and practice. Pick a cliché: You fight like you train. Train hard to fight easy. The more you sweat in training, the less you bleed in combat. Any one of these will serve you well, but remember if you fight like you train, you'd better train the right way. Part of that is understanding that if you are forced to draw your gun, you may not be required to fire it.



Let's stop and take a realistic look at how your concealed handgun may be put to use. The worst-case scenario is that you'll have to draw and fire in self-defense. The more likely scenario is that you'll have to draw and hold your fire; either issuing commands, holding the assailant at gunpoint or watching the scumbag turn and flee

once he realizes he's made a possibly catastrophic error in the victim-selection process.

As far as your practice schedule goes, once you've selected your own personal mantra, the likely course of action is to head to the range and burn up a bunch of gunpowder in an effort to improve your skills. Now, I'll never speak ill of spending time on the range, but consider this: It takes 5,000 to 7,000 repetitions to create the muscle memory required to master an activity. At that point, your response becomes smooth – almost automatic. If you spend hours on the range learning to draw, acquire the sight picture and fire, consider what will happen under the stress of a potentially life-threatening encounter. You might fire on instinct, when a shot is not required. At that point the legal meat grinder gets switched on with you in the feed chute. Most of the time, you won't need to fire. Yet, if you perform a perfect draw and get your sights on target quickly, you will be able to fire if need be. Remember the all-important rule: Keep your finger off the trigger until you have made a conscious decision to shoot.

So, in reality, you need to practice the draw much more than you need to practice the shot. The most important thing you should learn to do effectively – every time, without fail – is to bring your gun to bear and immediately align the sights. All the while, train to keep your finger off the trigger until you have made that conscious decision to shoot. If your finger is along the frame above the trigger and you decide to shoot, you will be able to do so without delay. This position greatly reduces the chances of an accidental discharge.

Learning to draw is done as dry training. As the name indicates, dry practice is done without any ammunition. The primary goal here is to acquire the skills to get your gun into action quickly and smoothly. The secondary goal is to serve as a reminder that once you draw, you must make absolutely sure of your need to fire before you actually pull the trigger. Anything less than absolute certainty on your part could mean the difference between the justifiable use of lethal force and legal a nightmare that lands you in prison.

The First Step

The first element of an effective draw is to remove your handgun from concealment. You've got to clear your clothing or open the fanny pack and get a good firing grip on the gun. This is the reason you carry your gun in the same place every time you strap it on. Simply put: You know where it is. Once you have repeated the drill 5,000 times, you will automatically reach to the right place. The gun had better be there.

A full-sized pistol under an open sport coat or light jacket is easy. You simply brush the jacket back out of the way with your gun hand and grab the gun. Practice that rearward sweep of the gun hand until you instinctively know how far back you need to bring your hand to allow you to acquire a firing grip. Lift the gun up to clear the holster and thrust it forward toward the target as you bring it up to your line of sight.

If you have a pocket pistol tucked into an inside-the-waistband holster you will find that leading with your thumb provides the best option for pulling the small pistol from its holster. You need to hook the gripframe with your thumb because the rest of the piece will be concealed behind that tiny holster. As the pistol comes up do what ever it takes to get a comfortable firing grip on that gun and then repeat it until you can do it without thinking.



The most important thing about drawing from a fanny pack is to get the pack open as wide as possible quickly. Keep the gun in the same place every time you strap it on and you will soon learn how quickly you can get it into action.

When using a fanny pack, the key is to get the pack open as wide as possible to insure your firearm doesn't hang up as you draw. Grab the gun and drive your elbow straight back until your gun

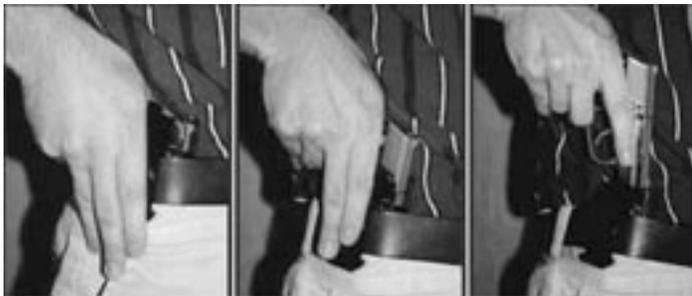
hand (which is now holding the gun) draws about even with the seam of your trousers. From there, get the gun up and on target.

If you are wearing a closed-front garment, the first movement will be made with the off hand. Reach as close to the gun as possible and lift the garment straight up — high. No need for modesty here. Get that shirt or pull-over out of the way, then complete the remainder of the draw.

The Heart of the Matter

With the gun in your hand, you must now get it on target. Nothing good comes from an errant shot. This is where all the basic marksmanship and pistol shooting skills apply. Bring the gun up to your line of vision. Focus on the front sight. Keep a firm grip. Shift your weight a bit forward and assume the most convenient firing stance. Keep your finger off the trigger until you are ready to fire.

At this point you are engaged and on a typical range session you would fire a double tap. And as with all training if you do it enough times it becomes automatic. This becomes a serious issue if, upon seeing you draw your pistol, the knife-wielding assailant turns to flee. In the one second it takes for you to complete your draw and instinctively fire, your attacker could have his back to you. There is no end to the problems shooting someone in the back will cause you.



IWB series: Getting a small gun from an IWB holster can be tough. 1. Start by hooking your thumb behind the grip and pulling up. 2. As soon as you can, start getting your other fingers in a firing grip. 3. Clear the leather and get the gun into action.

With the gun up and on target, your training should tell you to take control of the situation. Do so. Issue a firm command. “Stop! Drop your weapon or I will shoot.” Yes, I understand this is dry practice and you are talking to a target, but remember that District Attorney — the gun-hater — he is going to want a complete statement for the investigation of your self-defense shooting. And you fight like you train. The command gives the assailant clear indication as to your intentions. It turns bystanders into witnesses, giving them a chance to see that you are defending yourself. If you must fire, you can do so very easily. And you may not have all your legal bases covered, but you certainly have the first two.

Run this scenario through to a trigger press only one time in 10. In between your sessions of dry practice, you will of course be practicing the fundamentals of trigger press and recoil control on the range. This dry practice gives you everything you need —including dropping the hammer — without the recoil, the report and the flying lead. There is no danger of acquiring a flinch and dry practice keeps your ammo costs way down. Think about it: You’ve practiced the draw. You’ve focused on the front sight and you’ve covered your legal bases with your warning command. If you practice all of this regularly and then one day find yourself in a bad situation that requires you to pull the trigger, the accuracy you need will be there. More importantly, the gun will be out of its holster and on target, where it can do the most good.



Full series: A full-sized auto, like this XD-40 Tactical, is almost always covered by a loose cover garment. 1. Practice pushing that garment out of the way until it becomes second nature. 2. Then get a grip on the pistol. 3. Get the muzzle moving toward the target. Notice the finger is off the trigger. In this position, there can't be accidental discharge. This is as important to a good draw as is clearing the holster quickly.

Sidebar: The rules for dry training

To avoid any possibility of a tragic accident, dry training must be conducted in a suitable location under very strict rules. The first rule is that no ammunition should be in the room in which you are training. Unload the firearm. Unload any magazines you will be using during the training session. Insure the chamber is empty and use snap caps if you feel the need to buffer the firing pin.

A suitable location is one that is free of distractions and offers a training area that will effectively stop a round from the gun you use in the training. If you are thinking of using a stud-framed sheetrock wall as your training background, realize that a round from most common handguns will pass right through. A better choice is to conduct your dry training in a locked basement room or up against some other cinder block or cement wall.

Don't use a light switch, clock or photograph as an aiming point. Use a standard target. Conduct your draw, issue your commands and finish each sequence with a trigger press or a reholstering according to your planned training. When you are finished, leave the training room to reload your gun and say aloud, “Dry training is over. This gun is now fully loaded and ready for action.”

Only vigilance will prevent accidents.

Sidebar: Simple rules for effective carry

Same gun. Same place. Every time.

In an emergency you can count on being only half as effective as you are in training. Because repetition builds skill, choose one gun for concealed carry and try to carry it in the same manner every time you leave the house. If the time ever comes that you need the gun to defend your life, you'll know where it is, how to get it into action quickly and how it works.

Kevin Michalowski is an NRA-certified pistol trainer and a member of the Waupaca County Sheriff's Department Reserve.



FORCE ON FORCE NOTEBOOK: REVISITING THE 21 FOOT RULE

by Jack Rumbaugh

A very large volume of information arrives in my e-mail inbox every month and an article by Bob Irwin titled, *Rethinking the 21-Foot Rule* caught my eye. I agree with much that Mr. Irwin states in his article, but as we'll see later on, I reach a far different conclusion.

The 21-foot rule is also known as the Tueller Drill, named after Dennis Tueller, a police officer with the Salt Lake City Police Department who asked the question: "How close is too close?" He essentially quantified the distance that an attacker can cover in the same time that a defender can draw his pistol and fire a shot on target. He found that the distance of 21 feet can be covered in 1.5 seconds. This is the standard by which many defensive shootings have been measured. Shoot too soon, you are criminally liable. Shoot too late, you risk injury or death. There is very little margin for error.

In reading the article by Mr. Irwin, he finds that the 21-foot rule is fundamentally flawed because the participants in the drill know an attack is coming. An unsuspecting civilian won't have that luxury. I do agree that the 21-foot rule is limited in that it is a drill rather than a counter to an actual assault. He comes to the conclusion that an officer who is caught unawares would need a little over 3.5 seconds to recognize and react appropriately to a deadly threat. This equates to approximately 50 feet of distance the assailant would cover in that time. In fairness to Mr. Irwin, he does mention a few tactics to delay a charging opponent. He speaks about drawing to low ready, giving ground to increase distance, using cover or placing an object between you and the attacker,



as well as shots to the pelvic girdle. He goes on to describe a drill to simulate a charging opponent. He has a method to make a charging target from an IDPA or IPSC target, some string, wood, and a couple of cup hooks. The instructor would pull the target towards the student to simulate a charging opponent. His final statement was: "After running this drill a few times, you will rethink the 21-foot rule."

I have a much simpler solution:

MOVE!

It does not get any more fundamental than to get off the X to avoid an attack. We have proved it time and time again with Airsoft in force on force scenarios. You can avoid an attack at bad breath distances and prevail using dynamic movement coupled with a smooth presentation. It's amazing to me how a simple concept such as moving to the 1 o'clock or to the 11 o'clock can be dismissed for a static drill. It's an example of how the mantra of stand and deliver permeates training, even today.

To illustrate the distances that were discussed in the article, we shot a series of photographs from the point of view of the defender. The photos represent distances of 50, 30, 21, 12, and 6 feet. As you can see, 50 feet looks like a mile from the defender's POV. We typically perform our scenarios in the *Interactive Gunfighting* class from 21 feet and in closer, so I included those distances for comparison. If we run simple drills at each of these distances, it's not difficult to see how easily you can avoid your adversary and get shots on target. I'd love to have 50 feet to react to every assault. It would make me a very happy camper. But as we know, most assaults are up close and personal. Once we reach the inner distances of three to four yards, we must move with authority to avoid the attack. As the distance becomes shorter, some sort of preemptive hand to hand techniques will be needed to counter the initial attack. Once the attack is blunted or redirected, you can employ your pistol to maximum effect.

Mr. Irwin suggests presenting to low ready during the attack. The accompanying photos show the difference between low and contact ready as taught by Suarez International. Low ready lacks the commitment that contact ready demonstrates to your attacker. He also mentions that you should give ground, seek cover, or use obstacles to your advantage. Using obstacles to slow your attacker is a great idea that will buy you precious seconds. Giving ground to the 6 o'clock line has not been shown to be a sound tactic in our Force-On-Force scenarios. Usually the guy backing up gets run down and bowled over. The person running forward will always catch the person backpedaling. Moving to the 5 or 7 o'clock lines are not always optimal, but better choices than directly to your six. He also mentions that you should consider pelvic girdle shots to blunt the attack. There are several issues with this. The best place to shoot the pelvis happens to be the points of the hips, a target the size of a 50 cent piece. Targets this size are challenging when both the shooter and target are stationary, much less when both are moving. The pelvis is a ring structure, and must be broken in two places to render it unstable. Pistol rounds are ballistically inferior, and not likely to do the kind of damage to the pelvis needed to break the bone. Also, if you have time to shoot the pelvis, would you not also have the time to place shots center mass or in the head? Nothing is as final as two or three rounds in the cranial-ocular cavity. Couple this with dynamic movement off the X, and you have a winning combination.

With regards to his training technique, it is extremely difficult to have total surprise in any training exercise. We do the best we

can to randomize the scenarios. Sometimes an attack is launched; sometimes the contact is completely benign. There will always be some sort of anticipatory reaction shown by the student. There really isn't a way to effectively get around this fact. All we can do is attempt to make all our training scenarios and drills as real as possible.

Next month we will be looking at another of the scenarios posted by our members. To have your scenario considered for publication, visit the Force-On-Force Notebook sub-forum under the USCCA Forums.



10 SECONDS TO FIGHT

by Armando Basulto

Reprinted by Blackwater Tactical Weekly and the Las Vegas Police's Training Wheel



Armando training a unit of Britain's Royal Marines, 3/4 Commando.

Some coaches subscribe to the old saying: "Pain is the best teacher, but nobody wants to go to his class." Though it should be obvious that nobody wants to train just to get hurt, there is much value in experiencing the "pain" of not only pushing yourself physically and mentally, but of preparing yourself for the physiological shock of the give and take of an altercation (in or out of the ring!). In other words, get used to getting hit...or "tapped"...or hit with a stick...or...

Warriors throughout history have made experiential learning part of their training. Men who prepared for war were expected to deal with the stress and shock of being on the receiving end of an enemy's attack, but were expected to keep their wits and respond in kind. In knighting ceremonies, the newly minted knight was often struck a blow across the face with the admonition "let that be the last blow left unanswered!"

Medieval chronicles depict knights, emboldened by a chivalric code, religious fervor or courtly love, taking blow after blow, with lance or sword and continuing to fight, vanquishing their opponents before (often but not always) succumbing to their mortal wounds. Though at times these accounts could be exaggerated, the archeological evidence showing both weapons and men surviving after repeated battle abuse, show this was not a fantastic or even uncommon occurrence.

In more recent history, during the Civil War and the Indian Wars, the subject of the “Dead Man’s Ten Seconds” was often mentioned in accounts depicting battles. In many of these stories fighting men continued to fight heroically for ten or more seconds after taking a fatal blow, oftentimes mortally wounding and defeating their opponents before succumbing to their injuries.

The term “Dead Man’s Ten Seconds” appears in some early Western documentation (i.e. accounts of Texas Rangers, not Dime Novel idealism), depicting old gunfighters of the frontier era receiving fatal wounds yet still out-firing their opponents.

In most of these gun battle encounters, from the time of the fatal hit to the time the lack of blood flow carrying oxygen to the brain caused loss of consciousness/death, was approximately ten seconds. Headshots of course in most cases take out the subject at once as expected. This happened enough that the term “Dead Man’s Ten Seconds” became part of the lingo and jargon of the Frontier.

Experienced fighting men of the period were aware of these “Ten Seconds”. One account (a first hand account in the book *A Texas Ranger* by N.A. Jennings, circa 1870’s) tells about two Texas Rangers that had a huge dislike for each other but, both handy with the gun, knew that the other “...would have his “Ten Seconds” to do what he needed to do. I have heard several men tell another man in the heat of a bitter dispute to take his best shot if he wanted but he ‘Would have his ten’ as well. I never witnessed it go past that point knowing full well they meant that they would follow thru.”

These “Ten Seconds” are far more common in a knife fight after a fatal wound, and in most cases it takes some time before the loss of consciousness is complete. Duels with Bowie knives were common during this same period and accounts of these fights in newspapers of the time tell of the combatants wounding each other over and over and continuing to fight (see *Duels and the Roots of Violence in Missouri*, by Dick Steward).

Two books, *Forensic Pathology* and *Gun Shot Wounds*, both by Dr. Dominick J. DiMaio, Medical Examiner discuss that if the central nervous system is not hit and the skeletal structure has not been damaged to the point that it cannot bear the weight of the body, a fatally hit human can still function for 10 seconds or longer.

In a gun battle, perhaps more than in unarmed combat, the most unpredictable component affecting reaction time and capability is the psychology of being shot. We are conditioned by TV and the movies to expect a person (and ourselves) to fall immediately and die instantly when struck by a bullet. As countless police videos will attest, this only happens with any surety in the movies. Many “one shot stops” occur because of the psychological trauma of being shot, regardless of the physical damage done. Of course, this assumes a certain degree of rationality, which can be absent due to drugs, alcohol and psychosis.

Michael Platt, who was involved in the FBI’s “Miami Massacre” (1986), was hit with a non-survivable wound within seconds of the initial gunfire. He continued fighting and killed two agents, and managed to wound several more before dying. Ed Mirales, an FBI agent, was shot in the arm with a crippling round, yet was able to work the action on an 870 shotgun one handed, and end the fight.

Though most people are fortunate to have their knowledge of killing limited to TV and movies, police officers are trained to expect someone who has been shot to be capable of continuing the fight for some time (at LEAST 10 seconds) - certainly enough to empty the magazine on their weapon. With this in mind, law enforcement personnel (and our combat troops) are taught to keep firing as long as the bad guy continues to present a deadly force threat - i.e. they drop the weapon or lose consciousness.

Working live fire drills with the SIG 220

The only shot that will instantly stop a fight is one which disables the central nervous system (brain or spinal cord). Dr Martin Fackler, the director of the wound ballistics laboratory at the Presidio of San Francisco in the 1980’s, did the definitive work on this subject (Wound Ballistics Review, Volume 5 Number 1, Spring 2001). It followed the 1986 Miami FBI shootout, and helped the FBI (and others) reach decisions in handgun calibers and bullet design.

One of the conclusions of the study was that if the brain or upper cervical spines are hit, incapacitation is almost invariably immediate. If not, the bullet must create a large enough wound cavity and disrupt blood-bearing organs (lungs, heart, liver, spleen) and arteries to promote the rapid lose of blood and consciousness. Depending on the size of the wound cavity, organs involved, and rate of blood loss, incapacitation can take 10 seconds or longer.

In Basulto Academy’s Combat Pistolcraft curriculum, we always train both aimed fire, and instinctual or “Point of Aim” fire. This is not only to accommodate the degradation in fine motor skills caused by the adrenaline rush but also to prepare one tactically and mentally for being able to return fire and “stay in the fight”, even after having received a wound.

This “Stay in the Fight” mindset is an attribute that must be developed and trained in all self-preservation scenarios. It is not simply the “get tough” attitude in dealing with training injuries or exhaustion. It is also a trained familiarity with the trauma of getting hit so that response time, accuracy and intensity are not affected.

My Muay Thai teacher instilled in his students the mantra of “take one, give two!” He was tough fighter in Thailand, his commitment so complete to the ring that he had a tattoo across his forehead (literally!) announcing his occupation as a fighter for all to see. Many of the blows received in the ring, whether it be a Savate match, a Muay Thai or boxing match, would put the average pedestrian down before the cameras would have time to take a picture. What makes fighters tough is their familiarity and acceptance of the blows as part of balancing that algebraic equation of “The Fight”.

Daily sparring is not enough (though it is a step in the right direction). For obvious reasons, you could only limit yourself to the “shock” of a particular intensity and/or scenario (unless you are willing to ask your training partner to shoot you or stab you weekly so “you can get used to it”!) What is required is also a complete realignment as to your expectations and limitations when the chips are down. You must develop your “Will to Survive” beyond the mere “tough guy” level.

Your mind must be sharpened to the commitment to “stay in the fight” regardless of pain or surrounding distractions. Visualization, before and after training, is essential, but your mindset while sparring or “rolling” or even at the firing range must be developed as well. This can, and should be a self-managed part of your training, but a good coach will lead you to it without you even knowing it. You should incorporate this mindset development into all facets of your training.

For starters, when sparring, never allow yourself to stop or quit before the round is over. Do a whole round where you are not allowed to punch or kick (only defense) followed immediately by a round where you respond to every hit by your opponent with 3 blows.

When grappling, always roll for a predetermined time period (not until someone taps) and do not reset after each tap but rather have a mutual agreement that as soon as a submission is locked in, you immediately release and continue from that position.

At the firing range, dedicate a portion of your time to point firing and not just target practice. A great drill is to do a set of Squats/ Pushups to raise your heart rate, then immediately draw your weapon and fire.

Ultimately, the ideal is to feel confident in what your mental and physical state will be even when traumatized. Your ability to stay in the fight is important in a competitive sport environment, but

in a self-preservation mode, your “ten seconds” could mean life or death for you and your loved ones. You owe it to yourself, and your loved ones entrusted to your care, to “Cowboy up”!

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Mr. Basulto is one of a handful of Senior Full Instructors certified to teach Jeet Kune Do Concepts under Paul Vunak and has been the highest-ranking East Coast representative for Progressive Fighting Systems (P.F.S.) since 1994. He has helped train American and European military and law enforcement in close quarter combat (hand-to-hand and weapon training) for over a decade. He is also certified to teach knife defense/offense and basic pistolcraft.

For more information, please visit his website: <http://wayofnoway.com>

HANDGUN RETENTION: THE ARMED CITIZEN'S PERSPECTIVE

by Massad Ayoob

Handgun retention is the art and science of defeating an attempt to disarm the legitimate wearer of the gun. It was developed primarily by, and for, police officers, who when in uniform carry their sidearms in plain sight and, therefore, within easy reach of anyone physically close to them. On the surface, it would seem that this would be a concern armed citizens could ignore, unless they were practitioners of open carry; after all, most private citizens carry their guns concealed. Unfortunately, that's an oversimplification.

The CCW-holder's concealed gun may become visible, from something as simple as the wind blowing his coat open at the wrong time. The attacker may be a psycho relative, a former friend turned bad, or a disgruntled ex-employee who knows the citizen well enough to know that he or she carries a gun, and where it is carried. Or, a physical assault may simply turn into a wrestling match and, when the attacker's arms go around the pistol-packer's waist to grapple, that attacker feels the gun and the struggle for the weapon is on.

Cop or armed citizen, plainclothes or open carry, handgun retention will break down into several layers of protection.

Awareness, Alertness, Preparedness

Believing that a concealed gun will never be targeted for a snatch attempt is naïve because it doesn't take into account the very real concerns described above. A person who's not even aware that someone might try to take his gun is almost hopelessly behind the curve if such a thing does happen. The person carrying a gun needs to maintain constant *awareness* of this very real possibility. Those who carry guns should be as alert as an on-duty police officer to what is happening around them. When carrying, we need to be in the constant state of relaxed alertness that the late, great Col. Jeff Cooper defined as Condition Yellow. Action beats reaction. We can react in time only if we have a reactionary gap--time in which to recognize the attack and counter it--and that can only be provided by *alertness*.



Finally, we must be prepared to react if such an attack does come. If we don't know what to do in that situation, or we aren't committed and ready to do it, awareness and alertness will be useless. *Preparedness* includes the following components.

Hardware Solutions: the Guns

While we all scoff at hardware solutions to software problems, the fact is, hardware can be of definite help in many of the cases under discussion. Some police departments still mandate that their officers carry on-safe pistols, because they've had many cases where bad guys got the service weapon away, tried to shoot the officer ... and couldn't, because they couldn't figure out which of those little buttons and levers "turned on the gun." It may buy only a few seconds, but historically, that has usually been time enough for the officer to regain control of the situation.

Single action pistols--the 1911, for example, and the popular Browning Hi-Power--are normally carried on-safe anyway. Many double action pistols (Beretta, Heckler and Koch, Ruger, Smith & Wesson, Taurus, and more) are available in models with manual safeties. Training and practice allow the user to off-safe the gun during the drawstroke with no appreciable loss of reaction time if they must draw and fire quickly to protect their lives.

Those who prefer revolvers can have the Magna-Trigger conversion of the S&W installed by Rick Devoid at Tarnhelm Supply. This is the only "smart gun" that has ever really worked. It will only fire for someone wearing a special magnetic ring on the middle finger of their firing hand, but for that person, it will fire instantly when the legitimate user's hand closes on the weapon in a conventional firing grasp.

One other "hardware fix" is a backup weapon. The very movement he used to disarm you can have the successful attacker moving away from you as he turns your weapon in your direction. This means you may not be able to turn the tables and "disarm him back." However, many a cop has been able to save his (or, yes, her) life by drawing a second gun and shooting the man who took their weapon before he could kill them with it.

Hardware Solutions: the Holsters

Armed citizens who have embraced open carry have, for the most part, become aware of the importance of having some device that will slow down or impede an unauthorized hand that tries to pull their gun out of the holster. Especially popular is Blackhawk's SERPA, which has a low-profile paddle on the outside that is positioned ideally for the wearer's straight trigger finger. If this paddle is not pressed inward, the holster is designed not to release the weapon. Another low profile holster which, like the SERPA, is popular among police detectives familiar with weapon retention concerns is the ALS (Automatic Locking System) series by Safariland, which requires the person drawing to thumb a discreetly hidden button which is naturally placed for the wearer's hand, but less so for the hand of an unauthorized person.

Even a simple safety strap is better than nothing in this regard. Safariland pioneered the concept of quantified "retention levels" for holsters. If the holster is a simple open top design from which anyone can just pull the gun upward, it's "Level Zero" because it has no retention effect per se against unauthorized hands. If a single safety strap or locking device must be released before the draw can begin, the holster is said to have Level One security. If it has a second securing feature requiring a second movement--say, the gun must be pushed downward and or forward, or rocked backward before the holster will release it after the safety strap has been unfastened--the holster would be considered Level Two. One of the most popular police duty holsters over the years has been Safariland's 070 model, which is Level Three: two safety straps must be popped, one with the thumb and the other with the middle finger, and the gun then rocked in a certain direction before the weapon can be drawn.

A manual safety on the pistol, for all practical purposes, adds one more level of security. An open top holster with a cocked and locked 1911 is essentially a Level One system, as is a revolver with no manual safety in a thumb-break holster. When I carried my department issue Ruger .45 auto on-safe in a Safariland 070, I basically had four levels of security working on my behalf.

Software Solution: Weapon Retention Skills

In the old days, the only weapon retention taught was to hang onto the gun with one hand and use your other hand--and every other body weapon at your disposal--to hit, kick, bite, and head-butt your opponent. Unfortunately, if the attacker was fast and strong or just knew what he was doing, he might well have control of your gun before your blows took effect. In the mid-1970s, at the Kansas City, Missouri Regional Police Academy, master martial artist and police trainer Jim Lindell became the first to create a quantified series of handgun retention moves based on studies of actual disarms. What is now known as the Lindell Method or Kansas City Method has been hugely successful on the streets, and has been credited by some with saving as many police lives as body armor, if not more.

One big advantage of the Lindell method is that it teaches you to defend against not only attacks to holstered guns, but attacks to the gun you've already drawn and have in hand. In the latter situation, the most secure holster is no help at all. Another big advantage of Lindell's approach is that it is leverage-based, not impact-based. The punch or kick is dependent for its effectiveness on the strength of the striker and the relative softness of his target. Small people against big strong people don't fare well in punch-and-kick contests. Leverage, on the other hand, works with little regard for size disparity, and often actually favors the smaller person who may have a lower center of gravity, and may be faster and more limber than a much bigger, stronger assailant.

Expect to put lots of hours into handgun retention techniques to master them, just as you would to master any other form of hand to hand combat, or for that matter, your defensive handgun shooting skills.

Bottom Line

Veteran cops have long warned the rookies, "There's always a gun present at every confrontation--yours!" This is advice armed citizens would be wise to heed, also. A solid mindset that encompasses awareness, alertness, and preparedness ... guns and holsters that give you a more than even chance of prevailing in such a struggle ... and the physical skills to defeat a disarming attempt. Those are the layered safety nets you require if you hope to come out of an attempt by a violent criminal to take your gun away from you and murder you or anyone else with it.

They're proven. They work. They'll save your life as reliably as they've saved the lives of so very many cops.

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FORCE ON FORCE NOTEBOOK: ONE ARMED DRAW

by Jack Rumbaugh

Welcome to another Force on Force Notebook. This month's edition examines the scenario where, for one reason or another, one limb is immobilized. We will examine what happens when either the strong or support side arm is not in the fight. We will take a hard look at techniques that allow you to carry and deploy a pistol from concealment when one arm or hand is out of action.

The ability to use your firearms with either hand is a valuable skillset to develop. As we have seen in numerous force on force scenarios, there are a lot of shots to the hands and arms. There are two main reasons why this happens. First, your hands and arms are located in front of where your adversary would initially try to place his shots, your center of mass. Second, there is an element of target fixation on the gun. Like anyone else, your adversary will focus on the threat, and will tend to shoot what he is focused on. This results in injuries to your hands or arms. The ability to smoothly transition from one hand to the other will keep you in the fight longer.

But what do we do if we have only one arm to begin the fight with? What do we do if we have had surgery for something like Carpal Tunnel Syndrome, sprained our wrist playing a pickup game of basketball, or are in a cast for a broken bone? Do we just

leave the pistol at home and hope we are safe until we heal? No way! All we have to do is modify our techniques to accommodate our injuries.

Rather than work with the terms right and left, I'm going to use *strong* and *support* to describe our dominant and non-dominant hands. We should train ourselves to be Then paste: ambidextrous, but for the sake of clarity, I'll use strong and support as a way to differentiate between the sides of the body.

Let's look at immobilization of the support side arm. There goes that two-handed presentation from the holster that you worked so long and hard to perfect. I bet you wish you had taken the time to work on your one-handed skills a bit more. What do you have to do to make this work? Not all that much, really. If you look at strong side carry--whether you favor hip or appendix carry--your biggest concern is clearing your garment. With an open front cover garment, not much changes. You'll still clear the garment with your strong hand as you acquire your firing grip. Holstering will be slightly different in that you won't have your support hand to keep it out of your way, so make sure your garment does not snag or interfere with your pistol as it enters your holster. If you feel any resistance, carefully start over.

With a closed front garment like a sweatshirt, you'll need to modify things to make it work. You'll need to use your thumb to push up the garment away from the grip of your pistol. Once you clear the garment, establish your grip with your thumb flagged to hold the garment out of your way. Holstering will require you to flag the thumb in the same manner to hook the bottom of your garment. Again, be aware of any resistance you feel during the holstering process. Appendix carry tends to be easier to holster one handed, and you may also want to investigate cross draw.

With an injured strong side, you can carry on the hip or in the appendix position if you have the proper holsters. If you are like me, you haven't invested in a large number of holsters for support side use. You may only have one or two options available to you. Personally, I'd opt for the appendix or cross draw positions. Your preferences are completely up to you. You would present the pistol and holster in the same manner as with your strong side, keeping in mind that unless you train with both sides, your dexterity will likely be diminished. If just the hand is injured, you may be able to use it to some degree to help clear the garment during the presentation or holstering.

We always combine movement with our presentations, getting off the X. We have examined what the body does in the force on force arena during maximum chaos. We have noticed that the body naturally "figures things out" as you move. The old school method of keeping the support side hand and arm tight against the body, actually hinders dynamic movement. The support arm will act as a rudder of sorts enhancing your balance. If you need to turn your body, "flinging" the arm out will give you more momentum,

allowing you to turn faster. Think of how a student of fencing uses his support arm to enhance his movement. The principles apply here as well. With an arm immobilized, you'll sacrifice some balance and quickness. If it is in a sling, tight against the body, you lose your rudder.

Now that we have an understanding of some the dynamics that will be involved in fighting with a hand or arm that is injured, it's time to gas up the Airsoft pistol and run a few drills. We'll be simulating injuries to the strong and support side hands and immobilizing the arms as well. What we want to do is realize how our bodies work when we take something out of the equation.

The first scenario is an injured support hand. In order to concentrate on showing the techniques (instead of dealing with the problem of a live opponent) I used a static target instead of a real adversary. You can utilize the support hand to help control your over garment as you acquire your firing grip. As you present and move, your arm is still available to act as a counter-balance. The only technique not available to you is your two-handed grip. One thing you will want to keep in mind is that some angles of movement will be easier to utilize than others. For a right handed shooter, moving to the left will feel more natural. Moving to the right requires a transition to the support hand at some point fairly early on, but an injured hand or arm eliminates this possibility. If we completely immobilize the support arm, we find that our movement is affected to a degree. If your footing is a little bit unsteady, you won't have the other arm to act as your counter-balance. As you explode off the X, you'll clear the garment, acquire your firing grip, and present the pistol to the target.

In the second scenario, we trade sides to an injured strong side; the dynamics change. You will be using your less dexterous hand to present and shoot your pistol. This is where prior training will come in very handy. The more you practice with both sides of your body, the easier these techniques will be. As in the prior scenario, as you acquire your pistol and present to the target the injured hand can assist with clearing the garment. This movement will be more familiar to your more dextrous, more practiced strong side. Again, you sacrifice the possibility of the transition to the other hand. You will also experience the same issues with your movement as before.

Bilateralism is something that we emphasize in all our advanced courses. You should be able to shoot from either hand with a pistol and from either shoulder with a long gun. Along with the possibility of an injury prior to or during a gun fight, you may need to shoot from cover or concealment that forces you to use your support side. Train both sides of your body. Someday, your life may depend on it.



FROM INCIDENT THROUGH ACQUITTAL: ARRESTED!

by Marty Hayes, JD

Let's presume for a moment that the officers who have responded to your self-defense shooting have for some reason arrested you. It can happen, despite your glowing halo of innocence. While the police may know you were the victim of the crime and the dead guy is the suspect, there is at least as much likelihood that you will be arrested anyway. If that is the case, by all means keep your mouth shut. Do not talk to the police except if you are injured and you decide to request medical treatment. Talking to the police at this point can do you no good. All further communications between you and law enforcement must be coordinated by your attorney. But you also face another problem in the form of "Bubba" and your other new cell-mates, not to mention the obvious impact a few months in jail will have on your employment, your family, and your reputation. So let's look at what it takes to get out of jail.

Once you are booked you will be put in a holding cell until the jailers figure out what they are going to do with you. During this time, you should be given the opportunity to talk with your attorney--you know, the one whose card you have in your wallet for just these emergencies. But, just for the sake of argument, let's say you just moved to a new town, and don't have your new attorney's card in your wallet yet. You will still be allowed to call an attorney out of the phone book, and he will likely tell you he will be happy to represent you, as soon as someone delivers a \$50,000 retainer. Of course, most people don't have that kind of cash lying around, so you will end up implementing Plan B: getting a government-paid attorney, a.k.a. public defender, to represent you in the short term.

You will be assigned the next public defender on the list. You know the one, the fresh faced, starry eyed kid who could be your son or daughter, or even your grandkid, and whose first murder defense just happens to be yours. Now, before all the public

defenders reading this get their panties in a wad, I know there are some good, experienced attorneys working this sector of the business, and I applaud them and thank them for their service. But typically the money isn't available to put on a full-fledged defense, including expert witnesses, private investigators and second chair counsel.

In any event, you will have an attorney at this initial arraignment, and you will be asked how you plead to the charges. After your "not guilty" plea, a bail hearing date will be set, or if both parties agree, bail can be set at the initial hearing. If a bail hearing date is set, it will be within a few days of your arraignment, and in the meantime back to your cell you go.

Assuming you have survived the last couple of days in jail, let's skip ahead to the bail hearing. If you have your own attorney---one who plays golf with the prosecutor every Thursday and who has known the judge for a dozen years---you have a reasonably good chance of getting out of jail without needing to post bail. Your attorney will explain to the judge just how upstanding you are, how you have a good job, are a good spouse or parent, and how you give to the local children's hospital; and that he, the attorney, believes you have a legitimate claim to a case of self-defense. Then he winks at his golfing buddy the prosecutor, who declares that he has no issues with you being released on your own recognizance. The judge, looking forward to your attorney's support in his next election campaign, goes along with the deal, and you get to go home.

On the other hand, if you have had to activate Plan B, your assigned attorney doesn't know you, and cannot vouch for your standing in the community, your stellar reputation, or your all around good-guy persona. In addition, it is a fact that folks who need or end up using assigned counsel do not have a lot of money, and the lack of money lends itself to the perception that they are likely to flee the jurisdiction instead of staying and fighting the charges. So, the judge will have to decide how much money he thinks it will take for you to stick around and fight the charges against you, taking into account the severity of those charges. And speaking of severity, you will likely be charged for the most severe crime the prosecutor can massage the facts to fit. Remember, claiming self-defense is admitting that you killed the person, and only at trial will it be proven as a defense to the alleged crime. So if you killed someone you will more than likely be charged with murder, if they charge you with a crime at all. If the person or persons are still alive, either attempted murder or first degree assault will likely be the crime you are charged with.

The next step is that the judge will ask the prosecutor and your attorney for bail recommendations. This will be the first real hint as to how badly the state wants to convict you. The prosecutor may request a very high bail, claiming that you are a trained killer who wantonly used an assault pistol to shoot up the neighborhood, attended gun training classes so you could kill more effectively, and then, seeing your one opportunity, emptied your assault pistol at the deceased. If he paints you as a drifter who cannot keep a

job, doesn't own a house, and is known to join subversive anti-government groups such as the National Rifle Association and the Second Amendment Foundation, then you know you are in for a rough flight.

If on the other hand, the prosecutor simply goes through the motions, telling the judge that he requests a bail commensurate with the crime alleged, and doesn't attempt to paint you as the modern day version of Johnny Rambo, then you just may have a sympathetic prosecutor. They do exist. But the prosecutor, or more likely a deputy prosecutor, still has his role to fulfill, and that role means getting the judge to set bail. Your attorney, of course, will ask for the judge to release you on your own recognizance, or set a very low bail.

You then hear the smack of the gavel, and the judge has made his ruling. You are being held on X amount of dollars bail. Depending on the judge, local custom, or state rule that amount may be a cash bail, a property bond, or you can get a bondsman to post a bond in the amount for you. Let me close by explaining what this means. Let's take for example, a \$100,000 bail (which would be low for a murder charge, and about right for an assault charge). If you happen to have that much cash available to you, you give it to the court to hold until your trial is over. If you don't have that amount of cash in your pocket, you can ask your family, friends, employer, and the guy off the street to front you the money, and they might just do that. If you cannot scrape together the cash, and if the court will accept a property bond, you would sign a lien against property valued at the amount of the bail or greater. Lastly, if neither are available to you and the court will accept a surety bond, you can arrange for a court approved bondsman to post bond, saying in essence that he vouches for you, and if you don't come to court, he will pay the bail or show evidence of your death. Working with a bondsman comes at a very high price. The standard rate is ten percent, although that can differ. So, for a \$100,000 bail, you end up paying him \$10,000 cash, and you will likely never get that back. In addition to that, he will also be asking for collateral for the remaining \$90,000, perhaps in a deed of trust for your house, your parent's house, your 401k, the titles to your cars, your gun collection, or whatever assets you have that he can seize and sell to get his money back in the event you flee the jurisdiction.

That folks, is your pathway out of jail. If you cannot raise bail or don't have the money to pay a bondsman, you get to sit in jail until trial. Innocent until proven guilty, but in jail none-the-less. Doesn't seem fair, does it?

Marty Hayes is President and Director of the Firearms Academy of Seattle, Inc., and one of the founders of the Armed Citizens' Legal Defense Network. He has more than 30 years experience in law enforcement and firearms training, along with extensive experience as an expert witness and legal consultant.





FROM INCIDENT TO ACQUITTAL: THE COST OF DEFENSE

by Marty Hayes, JD

People own guns for a variety of reasons. Many have inherited firearms from family members, and give little or no thought to their utility. These guns are keepsakes, providing warm memories of their father, grandfather, or beloved uncle. Others own guns for hunting. Still others primarily own guns for sporting purposes, and do not routinely carry a gun for self-defense, but yet may have loaded guns at home. And gun owners such as myself and most of the readership of this magazine own and carry guns routinely for self-protection.

Unfortunately, most pistol packers have not truly thought out the legal implications, nor have they received training in the legalities of use of self-defense. For example, my home state of Washington was one of the first “shall issue” states in the country. According to www.learnaboutguns.com, the state currently has over 258,000 citizens who possess valid concealed carry licenses. But in the last 20 years, the largest firearms school in the state has trained only about 10,000 folks. I would estimate the other training companies, gun clubs and other sources of firearms training may bring that total up to 50,000, although I feel that number may be optimistic. That leaves a whole bunch of people -- the majority -- untrained and likely unprepared to face the legal aftermath of a self-defense shooting. Helping educate these people and others across the country is my purpose in writing this series of articles.

By way of introduction, I have worked in the firearms training field for 28 years, first as a police firearms instructor, then as an instructor for a popular indoor gun range in the Seattle area. For the last 20 years, I have been the owner and director of the Firearms Academy of Seattle, Inc. During this time, my company has trained over 10,000 armed citizens, and I personally have worked as an expert witness in over a dozen firearms related murder, manslaughter and assault cases. I recently completed my Juris Doctor degree, and am now eligible to take the bar, although I have put that endeavor off to form a second business, the Armed Citizens Legal Defense Network, LLC (see “One Call” by KL Jamison, CCM Aug/Sept ‘08). The words I write here come from the perspective of an expert witness, trainer, law school graduate and former police officer. They are not intended to be self-serving, and I hope they are not taken as such. It is also not legal advice.

When a person decides to carry a gun for protection, he takes on the same type of responsibility as when he decides to drive a car on the public streets of America. There is one big difference, though.

Most people have insurance to cover their culpability if they injure others in an “at fault” traffic accident, and the insurance company provides their legal defense. But there is no insurance available to protect someone who has wrongfully injured or killed another by the purposeful use of firearms. Sure, we can get insurance to cover negligence when it comes to the use of guns, but not to protect us from a criminal conviction for our purposeful act of shooting in self-defense.

If you use a gun for self defense, you have set into motion a complex set of legal actions which you might never recover from financially. A person who is the shooter in a self-defense homicide is presumed guilty until they prove their innocence. I know, a person is *supposed to be* innocent until proven guilty, and the judge will explain this to the jury at deliberation time. But until trial, the criminal justice system overwhelmingly takes the position that a person who kills another is the suspect in a murder, and that the person who died is the victim of that murder. What led up to the death is many times up for debate, and if you are going to be on the winning side of that debate, you will need to spend some money. LOTS OF MONEY.

Before we discuss how much money may be required, let me clarify why this is so. In American law, the elements of the crime of murder include “intentionally killing another human being.” So, unless you accidentally, negligently or recklessly killed another, you have met the basic elements of the crime of murder. Your intentional act of pulling the trigger will put you in jail in most jurisdictions, especially if that intentional act happened in public, instead of at home. It is only after you have either convinced the prosecutor that your act was legitimate self-defense (before trial, charges dropped), or after you have convinced the jury at trial, that will you be found to have acted in self-defense.

What does it take to prove your act was an act of self-defense? First off, you do not want a public defender. While there may be some exceptions, for the most part, public defender offices are woefully underfunded. The attorneys are likely new attorneys, and your case will probably be his or her first murder defense. There will be little or no money to hire experts to prove your side. In rural jurisdictions, the public defender will be drawn from a “public defender pool” and will likely be given a meager, lump sum fee to handle your murder trial. He is expected to get you to plea bargain to a lesser charge, and avoid trial. If you will not take a plea bargain (and most armed citizens who shoot in self-defense will strongly resist this), you go to trial. You will face a government entity that has all the money it needs to convict you, if they have set the crosshairs on you. So, the bottom line is, avoid the public defender. He is likely to get you sent to prison.

A private defense attorney will charge you a hefty retainer to even initiate a defense, as much as \$50,000 or more, depending on

what he believes he will need to spend to defend you. The money is usually paid up front, because once an attorney becomes the attorney of record, he likely cannot be dismissed from the case just because you ran out of money to pay him. He is in it for the long haul. If you don't have the money, some form of collateral will be established, like titles to your cars, your gun collection, expensive jewelry, or even your equity in your house.

In addition to attorney's fees, you will need to pay a private investigator to investigate for you. You see, the investigation the police do is intended to convict people of crimes, not to exonerate them. You need your own investigator to help prove your innocence. Figure on \$5,000 for this.

You will also likely need experts, and perhaps lots of them. When facing the possibility of a life in prison vs. being free, you want to stack the deck in your favor. Perhaps a psychological expert might be necessary, to look at any relevant psychological issues such as the mindset of the defendant or the mindset of the shooting victim. Crime scene recreationists will also likely be needed if the actions of the individuals are in dispute (which they usually are). If witness statements differ, then you'll need experts to explain the how and why of witness dynamics. Sometimes even the armed citizen makes comments that appear to be out of synch with other witness statements or with the physical evidence. This needs to be explained.

Lastly, there are the grand daddies of all expert witnesses, the independent forensic pathologists. The likely fees for the other witnesses and experts range from \$100 to \$250 per hour, but forensic pathologists (the experts with the M.D. behind their names) are getting \$500 per hour or more, depending on how good they are. And, you want a good one, don't you? One who is not subject to impeachment on the stand? There is nothing that snatches defeat from the jaws of victory more quickly than an impeached expert witness. Each of these people will also require a separate retainer to go against their expert witness fees. During the pre-trial phase, your attorney will be asking you for money for each of these guys or gals.

So, all total, your act of legitimate self-defense, if performed in public, will likely cost upwards of \$100,000. If the same act is performed at home, the likelihood of being arrested and tried will go down considerably, but as I am writing this for readers of *Concealed Carry Magazine* and not *Home Defense Magazine*, we had better plan for the worst case. And, if the above isn't a hard enough pill to swallow, we still have the civil suit to worry about.

The decision to carry a gun in public should not be taken lightly. There are immense implications, both for your future freedom and your future economic viability. But, on the other hand, it beats being dead, doesn't it? Future articles will detail how we can minimize these liabilities.

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